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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 74 (CM)

5 IBRAHIM ISSA,

6 Trial

7 Defendant.

8 -----x

9 New York, N.Y.
10 December 17, 2018
11 9:55 a.m.

12 Before:

13 HON. COLLEEN MCMAHON,

14 District Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
18 Southern District of New York

19 NOAH SOLOWIEJCZYK

20 ELIZABETH HANFT

21 KYLE WIRSHBA

22 Assistant United States Attorneys

23 BRAFMAN & ASSOCIATES, P.C.

24 Attorneys for Defendant

25 BY: BENJAMIN BRAFMAN

JOSHUA D. KIRSHNER

STUART GOLD

26 ALSO PRESENT: ANTHONY DUBAR, Special agent USPS-OIG
27 GRACE SOTO, Special agent IRS
28 COLLEEN GEIER, Paralegal Specialist USAO
29 PRIYA KUARLALL, Paralegal

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1 (Trial resumed; jury not present)

2 THE COURT: OK. I have your correspondence, so I'll
3 read it.

4 Where's the witness?

5 MR. KIRSHNER: Judge, I'm going to be offering some
6 exhibits. May I pass them up now?

7 THE COURT: Yes.

8 Good morning, sir.

9 (Pause)

10 (Continued on next page)

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Berzansky - Cross

1 (Jury present)

2 THE COURT: Good morning. All right. Sir, good
3 morning. You're still under oath, and you're on
4 cross-examination.

5 MR. KIRSHNER: Thank you, Judge.

6 RICHARD BERZANSKY, resumed.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. KIRSHNER:

9 Q. Good morning, Agent Berzansky.

10 A. Good morning.

11 Q. Did you get some rest this weekend?

12 A. I did. Thank you.

13 Q. No more overnights with Mr. Wirshba?

14 A. Nothing with Mr. Wirshba.

15 Q. And no more changes to the analysis at 3 a.m. this morning?

16 A. No, sir.

17 THE COURT: You should speak up.

18 Q. Now, on Friday we began to discuss the subcontractor income
19 that flowed from First Star to other companies. Do you recall
20 that?

21 A. Yes.

22 Q. And one of those companies was High Powered, right?

23 A. That's correct.

24 Q. And from High Powered, you had the bank statements?

25 A. Yes.

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Berzansky - Cross

1 Q. But you didn't analyze them, correct?

2 A. Only to track the transfers from First Star into their
3 account in 2012.

4 Q. So you did no reconstruction similar to what you did for
5 First Star, right?

6 A. That's correct.

7 Q. And you certainly didn't do an analysis of the cash sheets
8 for High Powered, right?

9 A. No.

10 Q. You weren't given them?

11 A. No.

12 Q. So you relied primarily in your testimony concerning High
13 Powered on the 2012 tax return, correct?

14 A. In terms of just comparing the subcontracting expense
15 deducted by First Star?

16 Q. Yes, that's right.

17 A. Yes.

18 Q. And you heard the testimony of the tax preparer George
19 Mousouris, correct?

20 A. That's correct.

21 Q. And he was the one who -- he testified about preparing the
22 2012 High Powered return, correct?

23 A. That's correct.

24 Q. When he was testifying -- Government Exhibit 203, show this
25 to the jury.

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Berzansky - Cross

1 MR. WIRSHBA: Your Honor, this document is not in
2 evidence.

3 THE COURT: Then take it off the screen.

4 MR. KIRSHNER: Oh, I'm sorry.

5 Q. Do you recall him testifying about a non-prosecution
6 agreement with the government?

7 A. Yes.

8 Q. The non-prosecution agreement, that was in connection with
9 his preparation of the High Powered return, correct?

10 A. I believe so, yes.

11 Q. So George Mousouris had to get a non-prosecution agreement
12 for the tax return that you relied on, correct?

13 MR. WIRSHBA: Objection.

14 THE COURT: I'm sorry. I apologize. I'm trying to do
15 too many things at once. The question is -- the objection's
16 sustained.

17 Q. You heard the testimony of George Mousouris when he
18 testified about the 2012 High Powered return, correct?

19 A. That's correct.

20 Q. You heard him testify about the non-prosecution agreement,
21 correct?

22 A. That's correct.

23 Q. He testified that the non-prosecution agreement was in
24 connection with the preparation of the return, correct?

25 A. I thought the non-prosecution agreement was in connection

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Berzansky - Cross

1 with everything that was going on, not specifically that
2 return.

3 Q. But yet you relied in your analysis on the tax return that
4 George Mousouris prepared, correct?

5 MR. WIRSHBA: Objection.

6 THE COURT: What's the ground for the objection?

7 MR. WIRSHBA: Relevance.

8 THE COURT: Overruled.

9 Q. As part of your work in this case, you actually --

10 THE COURT: Was there an answer to the question? I
11 did overrule the objection.

12 MR. KIRSHNER: I apologize. I thought he said yes.

13 A. Could you repeat it again. I'm sorry.

14 (Record read)

15 A. That's correct.

16 Q. As part of your work in this case, you did analyze the bank
17 records for First Star Auto, correct?

18 A. For 2012.

19 Q. Now I'm going to show you, if you can take a look at,
20 Defendant's Exhibit 701. See that there?

21 A. Yes.

22 Q. Is that part of the records of the bank, bank records of
23 First Star Auto?

24 A. For 2013, yes, it is.

25 MR. KIRSHNER: I offer Defendant's Exhibit 701.

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1 THE COURT: Any objection?

2 MR. WIRSHBA: No objection, your Honor.

3 THE COURT: Admitted.

4 (Defendant's Exhibit 701 received in evidence)

5 BY MR. KIRSHNER:

6 Q. If you could take a look at Defendant's Exhibit 702. It's
7 a similar document. It pertains to the 2013 First Star Auto
8 bank statement, correct?

9 A. That's correct.

10 MR. KIRSHNER: I offer Defendant's Exhibit 702.

11 MR. WIRSHBA: No objection.

12 THE COURT: Admitted.

13 (Defendant's Exhibit 702 received in evidence)

14 BY MR. KIRSHNER:

15 Q. I'm going to show you, this is 702 -- I'm sorry, excuse me.
16 This is 701 now in evidence. Turn to the second page of the
17 document. Is that a check?

18 A. It's a -- yes.

19 Q. Who made out the check? Where is the check drawn from?

20 A. The Richard L. Rosen Law Firm PLLC escrow account.

21 Q. What's the date of the check?

22 A. October 25, 2013, it appears.

23 Q. And in the memo section, what does it say?

24 A. ExxonMobil settlement.

25 Q. Who's it payable to?

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Berzansky - Cross

1 A. Tony Issa.

2 Q. And what's the amount?

3 A. \$170,695 and I can't read the cents. No cents.

4 Q. It's not payable to First Star Auto or any other entity.

5 It's Tony Issa, correct?

6 A. That's correct.

7 Q. Now I'm going to show you Defendant's Exhibit 702 in
8 evidence. It's on the third page. You see the date of that,
9 the highlighted portion?

10 A. Yes, I do.

11 Q. What's the date?

12 A. October 31, 2013.

13 Q. And what's the amount?

14 A. \$170,695.

15 Q. And what's the description of the transaction?

16 A. Customer deposit.

17 MR. KIRSHNER: Your Honor, I'm also going to offer --

18 Q. You see there at the top, which account is this?

19 A. First Star Auto Repair Inc.

20 Q. Thank you.

21 JUROR: We didn't see it.

22 MR. KIRSHNER: Your Honor, at this time I'm going to
23 offer Defendant's Exhibit 703.

24 THE COURT: Any objection?

25 MR. WIRSHBA: No objection, your Honor.

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1 THE COURT: Admitted.

2 (Defendant's Exhibit 703 received in evidence)

3 BY MR. KIRSHNER:

4 Q. Showing you Defendant's Exhibit 703 now in evidence. What
5 does this appear to be to you?

6 A. This appears to be the first page of a lawsuit.

7 Q. In the top section where it says "plaintiffs," is Ibrahim
8 Issa a named plaintiff?

9 A. Yes.

10 Q. It's not an entity or it's not First Star, it's not a
11 corporation, it's him personally, correct?

12 A. There is an entity named, but he is named as well.

13 Q. The 170,695, did you account for that anywhere in your
14 analysis?

15 A. I considered that as part when I was considering the
16 ordering rules in relation to the taxability of the money
17 coming from First Star to or for, on the behalf of Mr. Issa.

18 Q. But you didn't consider the deposit into First Star of
19 Mr. Issa's money in your analysis, correct?

20 A. I did.

21 Q. How did you consider the deposit of the money into -- from
22 Mr. Issa's personal account into First Star?

23 A. I considered it a capital contribution.

24 Q. What about all the money that the witnesses testified that
25 he brought in cash to the businesses? Do you recall that

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1 testimony?

2 A. Yep, yes, I do.

3 Q. There's one witness who said \$50,000 at one shot, right?

4 A. I recall the testimony, yes.

5 Q. There was another witness who said he brought in thousands
6 and thousands of dollars at various points, correct?

7 A. Yes.

8 Q. Did you consider that in your analysis?

9 A. I was not able to see that going through the bank
10 statements.

11 Q. Now, when we left off on Friday, we were discussing some of
12 the cash sheets. But before we do that, when you analyzed
13 First Star Auto, you analyzed it based on the bank statements,
14 correct, primarily?

15 A. Primarily, yes.

16 Q. You didn't consider the cash sheets?

17 A. Not initially, no.

18 Q. From an income tax perspective, is there any difference
19 between a cash -- having a cash payroll and paying your staff
20 by check?

21 A. Assuming that the proper tax returns are filed, no.

22 Q. Again, just from an income tax perspective, there's nothing
23 wrong with paying other business expenses with cash, right?

24 A. As long as they're properly accounted for, no.

25 Q. Now, by way of example, if someone came to First Star Auto

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Berzansky - Cross

1 and paid, let's say, just for example, \$100 for gas to First
2 Star Auto in cash, and then five minutes later a part was
3 needed for the auto repair section of First Star Auto and that
4 \$100 was used to pay for the part, would that be reflected
5 anywhere in the bank statements?

6 A. You're saying that the cash used to pay for that was pulled
7 out of the register?

8 Q. Yes.

9 A. Then no.

10 Q. So you wouldn't see the deduction on the bank statement for
11 the expense being the part, correct?

12 A. No.

13 Q. You wouldn't see it, correct?

14 A. Would not.

15 Q. That's correct?

16 A. You're correct.

17 Q. OK. Thank you.

18 A. Sorry.

19 Q. But if you did want to keep track of these deductions or
20 observe these deductions, you wouldn't look at the bank
21 statement, you would look at the cash sheets, correct?

22 A. Yes.

23 Q. So I'm going to show you Defendant's Exhibit 520, and this
24 is in evidence. If you look at this, you see here that the
25 total cash in is about -- they record a total cash in, and it's

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Berzansky - Cross

1 about \$2,200, right?

2 A. Yes.

3 Q. Then they also account for the credit card sales of 1,825,
4 right?

5 A. That's correct.

6 Q. Then they total it out at 4,000-something, correct?

7 A. Correct.

8 Q. And that seems to be money that's coming in, correct?

9 A. Appears that way, yes.

10 Q. Then we go to the middle here. There's a column called
11 "Paid Out," right?

12 A. Correct.

13 Q. If we go down this column, we see various expenses. A
14 taxi, correct?

15 A. Correct.

16 Q. Parts, correct?

17 A. Correct.

18 Q. New mechanic, correct?

19 A. Correct.

20 Q. It goes down and then it lists someone named Carlos,
21 correct?

22 A. Yes.

23 Q. And next to each one of those descriptions, pretty detailed
24 descriptions, there's an amount, correct?

25 A. That's correct.

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1 Q. Then you see at the bottom right there they total up the
2 amount that was paid out, correct?

3 A. That's correct.

4 Q. Does this appear to you to be an accounting of the daily
5 cash activity?

6 A. Yes.

7 Q. Does there appear to be legitimate business operating
8 expenses?

9 A. Potentially, yes.

10 Q. On the First Star amended return, did you see these expense
11 categories specifically listed in the deduction portion of the
12 tax return?

13 A. I can't recall off the top of my head. There were some
14 that said parts and cost of goods sold, but not all of them,
15 no.

16 Q. Did you consider any of these to be deductions in your
17 analysis?

18 A. Yes, I did.

19 Q. Did you total them up?

20 A. No, I did not.

21 Q. So how did you consider them to be deductions if you didn't
22 add them up?

23 A. When doing my analysis, I was able to determine the amount
24 of cash that was not deposited into the bank accounts to be
25 approximately \$437,000. When I gave my explanation, I used

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1 cash payroll because that's what the testimony was prior to me
2 being up here. In essence, that 437,000 represents all of the
3 cash expenses that was paid out by First Star Auto Repair in
4 2012. The missing cash must have been for the things that are
5 included on this cash sheet, not strictly cash payroll but all
6 items paid in cash.

7 Q. But you didn't just total up the descriptions right here,
8 correct?

9 A. That's correct.

10 Q. And all this information was available to you for multiple
11 months of the year?

12 A. For two months, yes.

13 Q. I thought it was August through the end of --

14 A. I'm sorry. I thought you meant the time I had to add it
15 up. You're correct, August through December. I apologize.

16 Q. And you just didn't add it up?

17 A. Not every category, no.

18 Q. Now I'm going to show you Defendant's Exhibit 521. See
19 that?

20 A. Yes.

21 Q. It's similar to Exhibit 520, right? It has the same
22 categories of information?

23 A. Some of them, yes.

24 Q. It lists parts and garbage and toll and diesel. Do you see
25 those?

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1 A. I do.

2 Q. Again, you didn't tally these deductions up, correct?

3 A. No, not individually, no.

4 Q. But there is one thing you did account for, right?

5 A. Yes.

6 Q. And that's when it says "Tony, \$300"?

7 A. That's correct.

8 Q. And whenever you saw that in any of these cash sheets which
9 you obviously reviewed, you counted that money towards his
10 personal expense, correct?

11 A. That's correct.

12 Q. When you added that all up between when it said "Tony" or
13 "Tony's friends," you had a number of \$275,000, right?

14 A. Across the three years or two and a half years, yes.

15 Q. Now, when you first testified, you testified that even
16 though you're a government witness and you acknowledge that the
17 government had their theory of this case prior to you being
18 assigned, your analysis was not done simply to support their
19 theory, right?

20 A. That's correct.

21 Q. And the constant changing of your analysis right up until
22 Friday morning at 2:30 in the morning, you testified that
23 wasn't just to make the numbers kind of fit the government's
24 case, right?

25 A. That's correct.

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1 Q. And your decisions about which trial evidence to consider
2 and which trial evidence to ignore, that wasn't done to help
3 prove the government's case, right?

4 A. No, it was not.

5 Q. Do you think you were being fair and impartial?

6 A. The analysis that I did at 2:30 in the morning that you
7 reference actually lowered the tax due and owing number by
8 \$150,000.

9 Q. The question was do you think in your analysis, from the
10 time you were assigned up until you testified, do you think you
11 were being fair and impartial?

12 A. Yes, sir.

13 Q. Agent, could you tell this jury that based on all the
14 evidence we heard, your decision to count all of the money next
15 to anything that said "Tony" or "Tony's friends" and use it as
16 a personal expense against Mr. Issa but at the same time and on
17 this very same sheet not consider a dime of the money for
18 payroll, parts, or taxis as a business expense, do you think
19 that's a fair and impartial analysis?

20 THE COURT: The objection's sustained. It's entirely
21 argumentative.

22 Q. Do you think considering Tony's name and when it says
23 Tony's friend to be exclusively a personal expense, do you
24 think that's fair and impartial?

25 A. Yes.

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Berzansky - Redirect

1 Q. Do you think not counting up the payroll parts and taxis
2 and other business expenses that are listed on these cash
3 sheets and crediting them as deductions in your analysis to
4 First Star Auto, do you think that's fair and impartial?

5 MR. WIRSHBA: Objection. Asked and answered.

6 THE COURT: Answer the question. Were you being fair
7 and impartial or were you trying to put your thumb on the scale
8 so the government could make out its case?

9 A. I was attempting to be fair and impartial.

10 THE COURT: Thank you.

11 Let's move on, please.

12 MR. KIRSHNER: No further questions.

13 THE COURT: Redirect.

14 MR. WIRSHBA: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WIRSHBA:

17 Q. Agent Berzansky, I'd like to start where Mr. Kirshner left
18 off, if we could start with the cash sheets.

19 Just before we broke just now, Mr. Kirshner was asking
20 you about whether you tallied all the information on the cash
21 sheets. Do you remember that?

22 A. Yes.

23 Q. Did you have all the cash sheets for the period that you
24 were being asked about?

25 A. No, I did not.

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Berzansky - Redirect

1 Q. So would a tally of those cash sheets give you a full
2 picture of 2012?

3 A. No, it would not.

4 Q. What, if any, evidence would give you a full picture of
5 what happened with First Star Auto Repair in 2012?

6 A. I had the complete bank statements for all three accounts
7 for First Star Auto Repair in 2012.

8 Q. Did you analyze those bank statements?

9 A. Yes, sir.

10 Q. All right. Mr. Kirshner also asked you about the entries
11 on those cash sheets for "Tony." Do you remember that?

12 A. Yes.

13 Q. Why is it that you included those entries, "Tony," in Tony
14 Issa's personal expenses?

15 A. Those entries were only considered for purposes of
16 calculating Mr. Issa's personal income tax liability. Anything
17 that said "Tony" I was unable to determine was a business
18 expense. That appeared, on the face of it, to be something
19 just for Mr. Issa.

20 Q. As Mr. Kirshner pointed out, there were business expenses
21 listed on those cash sheets, right?

22 A. That's correct.

23 Q. As you say, they were taking a relatively detailed
24 accounting of what went out, right?

25 A. That's correct.

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1 Q. Those entries, were they ever more detailed than just
2 saying "Tony"?

3 A. No.

4 Q. Were there other entries on those cash sheets that you also
5 considered to be a personal expense to Mr. Issa?

6 A. I can't remember off the top of my head. I don't think so,
7 though, no, only cash sheets Tony and cash sheets Tony family
8 and friends.

9 Q. So were there entries labeled "Tony's father"?

10 A. Yes.

11 Q. What did you consider those expenses to be?

12 A. Personal.

13 Q. Why?

14 A. Absent any further information, anything that was for
15 Mr. Issa's family appeared to be a personal expense and not for
16 the benefit of First Star Auto Repair Inc.

17 Q. Tony's father wasn't the only one getting cash from First
18 Star and Optimum, right? Weren't there other individuals in
19 Tony's family?

20 A. That's correct.

21 Q. Who else, if you remember?

22 A. Tony's sister, I believe. I think there was an entry that
23 referenced heat. I believe there were other entries for
24 brother, some of Mr. Issa's children as well.

25 MR. WIRSHBA: If we could bring up the ELMO,

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1 Ms. Geier.

2 Q. On cross, this is Government Exhibit 701, Mr. Kirshner
3 asked you about this check. Do you remember that?

4 A. Yes.

5 Q. Are you familiar with this lawsuit?

6 A. Not intimately, but I know what happened basically, yes.

7 Q. Are you familiar with the financials from this lawsuit?

8 A. Yes.

9 Q. How is that?

10 A. I was -- the information was included on the 2013 amended
11 return that was filed but never processed.

12 Q. Are you aware of where, if anywhere, expenses from this
13 lawsuit were deducted from any tax return?

14 A. Yes.

15 Q. What tax return?

16 A. The expenses were paid primarily from First Star Auto
17 Repair Inc.'s bank accounts.

18 Q. Did you review records of First Star Auto Repair?

19 A. Yes, I did.

20 Q. In those records of First Star Auto Repair, did you see
21 those expenses included as business expenses?

22 A. Yes.

23 Q. And is that proper?

24 A. No.

25 Q. Why not?

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1 A. Because the lawsuit did not name --

2 MR. KIRSHNER: Objection.

3 THE COURT: The objection's overruled.

4 A. Because the lawsuit did not name First Star Auto Repair
5 Inc. as a party.

6 Q. All right. Going back to those cash sheets for a moment,
7 you mentioned that you only reviewed the cash sheets in 2012
8 for what period?

9 A. August through December.

10 Q. But there was other evidence that you reviewed about cash
11 going out of First Star during 2012, right?

12 A. From the bank statements I was able to see.

13 Q. Let me ask you this: Have you ever seen this email, Agent
14 Berzansky? This is Government Exhibit 710.

15 A. Give me one second, please.

16 Q. Of course.

17 A. Yes, I've seen this email.

18 Q. Do you remember seeing this section while you were in court
19 during Ms. Betancourt's testimony?

20 A. Yes.

21 Q. All right. I'm right that in this email, Ms. Silva, she
22 says in an email to Mr. Issa: "You keep taking moneys from
23 First Star Auto and Optimum that are not accounted for. If
24 they were not all personal, you should let the office know what
25 they are for, otherwise I will go personal. See below how much

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1 you took in these last three months." And then there's a
2 table, right?

3 A. That's correct.

4 Q. And in that table, Ms. Silva, she accounts for the amount
5 of money that Mr. Issa has been pulling out of First Star and
6 Optimum. Is that what this email says?

7 A. That's what it appears to be saying, yes.

8 Q. All right. And it includes an amount paid to your family,
9 and that's \$4,000 in July, \$11,000 in August, and \$5,000 in
10 September, is that what that table says?

11 A. Yes, it is.

12 Q. Below that it says the total expenses paid for each month
13 are very high numbers, and there's four months listed there, is
14 that right?

15 A. That's correct.

16 Q. Now, did you use this information in coming to your
17 determination of how much was paid to Mr. Issa's family?

18 A. No, I did not.

19 Q. Why not?

20 A. This was not a business record that I considered to be
21 original. I used the cash sheets exclusively.

22 Q. So had you used this record, had you used this email, what
23 would have happened to Mr. Issa's tax liability?

24 A. The diversions coming from First Star and Optimum would
25 have been --

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1 MR. KIRSHNER: Objection to the term "diversion."
2 Conclusion.

3 THE COURT: The objection's overruled.

4 Q. You may answer.

5 A. The diversions from First Star and Optimum would have
6 resulted in a higher tax liability to Mr. Issa in 2012.

7 Q. All right. Agent Berzansky, do you remember being asked by
8 Mr. Kirshner on cross-examination about a company called High
9 Powered?

10 A. Yes.

11 Q. You were asked if you analyzed the High Powered bank
12 account, is that right?

13 A. That's correct.

14 Q. Did you do that?

15 A. As I stated, only in relation to the transfers between the
16 accounts and -- no, just between the transfers for the accounts
17 in 2012.

18 Q. So what did you use to determine High Powered's gross
19 receipts in 2012?

20 A. I used the amount that High Powered chose to place on their
21 tax return and file with the IRS.

22 Q. And was that important to your analysis?

23 A. In terms of determining what the subcontractor expense
24 should be allowable for First Star in 2012, yes.

25 Q. To the best of your knowledge, who controlled High Powered

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1 Auto?

2 A. Ibrahim Issa.

3 Q. Is it possible that the gross receipts for 2012 for High
4 Powered were actually higher than what was reported?

5 A. It's possible.

6 Q. All right. Mr. Kirshner asked you quite a bit about
7 staying up late to complete your analysis. Do you remember
8 that?

9 A. I do.

10 Q. You adjusted your analysis in this case, is that right,
11 during the course of the trial?

12 A. That's correct.

13 Q. Why did you do that?

14 A. I wanted to ensure that my analysis was as complete and
15 accurate as possible.

16 Q. I'd like to talk about one analysis, one change in
17 particular. Showing you Government Exhibit 5003, do you see
18 that?

19 A. Yes.

20 Q. What is this document?

21 A. This is my summary of the total tax due and owing for First
22 Star Auto Repair in 2012.

23 Q. When was this last column, this final column, added?

24 A. This was added sometime on Thursday evening, Friday
25 morning.

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Berzansky - Redirect

1 Q. All right. Why did you add that column?

2 A. Based upon the testimony that had been presented the prior
3 two days, I determined that there was -- the cash sheets
4 presented potential for deductible expenses by First Star. The
5 \$437,000 that I determined to be coming out as a result of my
6 gross receipts calculation were not deposited, excuse me, into
7 the bank accounts. I determined that those could be used for
8 expenses. Therefore, I gave credit to First Star for those
9 \$437,000 as cash expenses paid.

10 Q. So what's the difference between your analysis without
11 giving First Star the full deduction for the cash and giving
12 First Star the full deduction for the cash approximately? I
13 understand you don't have a calculator in front of you.

14 A. It's approximately \$150,000 less.

15 Q. In going back to the cash sheets for a moment, Mr. Kirshner
16 asked you whether there were things on those cash sheets,
17 including parts, am I right?

18 A. That's correct.

19 Q. What percentage of the missing cash did you count as a
20 deduction for First Star in this final column?

21 A. 100 percent.

22 Q. So would it make a difference whether or not that expense
23 for, let's say, a part is counted as an expense for a part or
24 whether it's counted as an expense for payroll in determining
25 the tax due and owing?

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1 A. No, the line items are still deductible no matter what
2 categorization you place them in.

3 Q. Is it fair to say that with respect to First Star in 2012,
4 that in this last column of analysis, you gave First Star
5 deductible credit even for the line items that include Tony's
6 friends or Tony's family, is that right?

7 A. And Tony as well, yes.

8 Q. Had you not done that, would First Star Auto Repair's tax
9 due and owing be larger or would it be smaller?

10 A. Had I not counted it as an expense, their tax due and owing
11 would be larger.

12 Q. So it was in First Star's benefit, is that right?

13 A. That's correct.

14 MR. WIRSHBA: Nothing further, your Honor.

15 MR. KIRSHNER: Your Honor, couple questions.

16 THE COURT: Sure.

17 RECROSS EXAMINATION

18 BY MR. KIRSHNER:

19 Q. Did you just testify that you determined that there was a
20 certain amount of missing cash based on the bank deposits?

21 A. Based on my analysis of the bank statements.

22 Q. When I cross-examined you five minutes ago, didn't we
23 figure out that a lot of cash may not have hit the bank?

24 A. I said that that was a possibility, yes.

25 Q. And now you testified that you didn't count up the cash

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1 sheets because you had less than a year, right? You had less
2 than a full 2012 cash sheets to do that, right?

3 A. Can you repeat that. I'm sorry.

4 Q. You didn't have the full 2012 everyday cash sheet to do a
5 thorough analysis in your opinion, right?

6 A. That's correct.

7 Q. That's because the government didn't give you the full
8 year, correct?

9 A. I don't know why. I wasn't provided with that information.

10 Q. And the DSRs that were discussed by Ms. Betancourt, the
11 government didn't give you those either, did they?

12 A. Not for the entire year, no.

13 Q. The personal expenses, the email that you were just shown
14 that were discussed, arguably personal expenses, right? Do you
15 remember seeing that?

16 A. Yes.

17 Q. You heard Claudia Betancourt testify that at the same time,
18 that was in 2012, at the same time tons and tons of cash was
19 going back into First Star from Mr. Issa's pocket, correct?
20 That was her testimony, right?

21 A. I don't remember her saying "tons and tons."

22 Q. OK. Thousands and thousands of dollars?

23 A. I remember her saying that Mr. Issa would come in with
24 money. I don't know how she could possibly know where it came
25 from. But, yes, I remember her saying that Mr. Issa did come

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Berzansky - Redirect

1 in with money.

2 Q. And Mr. Butt, he testified to the same thing, \$50,000?

3 A. Yes.

4 Q. Claudia Betancourt also testified that when it said "Tony,"
5 it didn't mean that Tony took the money; it was just that it
6 was authorized by Tony, correct?

7 A. Correct.

8 Q. And she would often call Mr. Issa, get that authorization,
9 and then note what it was actually for, correct?

10 A. Correct.

11 Q. And you didn't review those notes, did you?

12 A. On the cash sheets?

13 Q. On the DSRs where she said she put them, right?

14 A. No.

15 Q. Because you weren't given the DSRs, correct?

16 A. Not for the entire year, no.

17 Q. She also said that many of the things that said "Tony's
18 father" were loans, right?

19 A. Yes.

20 MR. KIRSHNER: Nothing further.

21 MR. WIRSHBA: Very briefly, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. WIRSHBA:

24 Q. Agent Berzansky, Mr. Kirshner just asked you about
25 testimony that there was cash coming into the businesses from

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1 Mr. Issa. Do you remember that?

2 A. Yes.

3 Q. He was referencing testimony of Ms. Claudia Betancourt,
4 right?

5 A. Correct.

6 Q. Did you examine the personal income tax returns of Tony
7 Issa for 2012, 2013, and 2014?

8 A. Yes, I did.

9 Q. Did you also take a look at the personal bank accounts for
10 Tony Issa during that time period?

11 A. Yes, I did.

12 Q. What, if anything, were you able -- where, if anywhere,
13 were you able to determine that there was funds available to
14 bring thousands and thousands and thousands of dollars into
15 First Star and Optimum?

16 A. Nowhere in any of the evidence I was able to review.

17 MR. WIRSHBA: Nothing further.

18 CROSS-EXAMINATION

19 BY MR. KIRSHNER:

20 Q. Did you analyze the 2011, 2010, 2009 personal bank accounts
21 of Mr. Issa?

22 A. No, I did not.

23 Q. Did you hear testimony that he was going through a divorce
24 right up until the 2012 year?

25 A. Yes, I did.

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1 MR. KIRSHNER: Nothing further.

2 THE COURT: I just have one question, which is in
3 doing the work that you've done, how would you account for an
4 indeterminate -- lots and lots is not a number. How would you,
5 as you do your work, account for lots and lots of cash, if
6 you'd be able to?

7 THE WITNESS: Well, that was as a result of my
8 analysis. One of the things we do is indirect methods of
9 reconstructing gross receipts, and that's sort of what I did.
10 By imputing the cash gas based upon the debits from the bank
11 account, I was able to determine the amount of cash coming in,
12 and that's how I was able to determine the cash not deposited
13 in that year.

14 THE COURT: OK. I got it. You did some extrapolation
15 to try to figure out what that amount was?

16 THE WITNESS: I wouldn't call it extrapolation, but
17 yes, it was a calculation based upon what was known.

18 THE COURT: But I'm talking about the cash that
19 they've just been talking about in these questions, the lots
20 and lots of cash that Mr. Issa brought in.

21 THE WITNESS: If I were to do an audit, civil audit, I
22 would be able to speak with the individual I was auditing. In
23 this case I was unable to do so.

24 THE COURT: Thank you.

25 Anything else?

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1 Thank you. You may step down.

2 (Witness excused)

3 MR. WIRSHBA: Your Honor, we have a brief housekeeping
4 matter.

5 THE COURT: Well, clean it up.

6 MR. WIRSHBA: Yes, your Honor. There were a few
7 stipulations that your Honor read into the record that we never
8 offered the stipulations themselves. That's Government
9 Exhibits 4003, 4008, 4009. The government offers those
10 exhibits at this time.

11 MR. BRAFMAN: No objection.

12 THE COURT: Admitted.

13 (Government's Exhibits 4003, 4008, 4009 received in
14 evidence)

15 MR. WIRSHBA: If I may have one brief moment, your
16 Honor?

17 THE COURT: As opposed to a long one?

18 MR. WIRSHBA: Your Honor, the government rests.

19 THE COURT: OK. Ladies and gentlemen, "the government
20 rests" are magic words. That means that the government has
21 introduced the evidence from which it intends to argue that it
22 has overcome the presumption of innocence and proven the
23 defendant, Mr. Issa, guilty of the crimes with which he's
24 charged beyond a reasonable doubt. I remind you that at this
25 moment, the government having rested, Mr. Issa remains cloaked

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1 with the presumption of innocence, and he will remain cloaked
2 with that presumption until 12 jurors unanimously decide that
3 the government has met its burden of overcoming that
4 presumption beyond a reasonable doubt, OK?

5 So I am now required to excuse you for a few minutes.
6 I need to talk to the lawyers. So don't discuss the case yet
7 and keep an open mind.

8 (Jury excused)

9 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Let's have a seat.

3 Mr. Brafman.

4 MR. BRAFMAN: Just waiting for the door to close.

5 The defendant has filed a motion, written motion
6 pursuant to Rule 29 of Federal Rules of Criminal Procedure.

7 I'm not certain whether the Court requires additional argument.

8 THE COURT: No, because it's a very thorough, complete
9 letter with a reply letter that I got to see this morning after
10 I read the government's letter.

11 MR. BRAFMAN: I just wanted the record to reflect that
12 we made the motion, that we filed the motion.

13 THE COURT: Indeed you did.

14 MR. BRAFMAN: I don't want to waste the Court's time
15 with argument. I don't think you need it, unless you have
16 specific questions.

17 THE COURT: I do not. The defense Rule 29 request for
18 a judgment of acquittal as to the bribery count is denied. To
19 the extent that the government misunderstood the original
20 motion, which I really don't think it did, you are certainly
21 free to argue that the government has failed to prove a quid
22 pro quo. I expect that's what you will be arguing. There is
23 certainly enough evidence of one to get the question to the
24 jury.

25 MR. BRAFMAN: Your Honor, if I may?

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1 THE COURT: Yes.

2 MR. BRAFMAN: We wrote specifically on the bribery
3 count, but I want the record to reflect that I am also moving
4 under Rule 29 for an order of dismissal with respect to all of
5 the other counts as we believe, based on the evidence, no
6 reasonable juror could convict Mr. Issa on the evidence beyond
7 a reasonable doubt.

8 THE COURT: Oh, I disagree with that, so I will deny
9 that motion too.

10 All right. Is it still your intention to rest?

11 MR. BRAFMAN: Yes, ma'am.

12 THE COURT: OK. Fine.

13 MR. BRAFMAN: The record should reflect, your Honor,
14 that I have discussed this decision with Mr. Issa; that
15 Mr. Issa agrees with my position and has authorized me to say
16 that he will not testify to your Honor.

17 THE COURT: Good. I'm going to ask him the same
18 questions right now.

19 Mr. Issa, good morning, sir.

20 THE DEFENDANT: Good morning.

21 THE COURT: Mr. Issa, there are two decisions at a
22 criminal trial that a defendant -- in a criminal case that a
23 defendant ultimately and finally gets to make. One of those
24 decisions is the decision to plead guilty or not guilty. The
25 other is the decision whether or not to testify. Everything

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1 else we remit to a lawyer who knows what he's doing, and the
2 lawyer gets to make those decisions, obviously, certainly the
3 lawyers that have appeared in this case working most
4 deciduously in the best interest of their client and zealously
5 representing him. But, ultimately, the decision to get on the
6 stand or not to get on the stand is your decision. I believe
7 that you have discussed this at great length with Mr. Brafman.
8 You haven't hired a superb lawyer for no reason, and I believe
9 that he has given you his best advice.

10 Are you satisfied that you've had ample opportunity to
11 talk about this issue with Mr. Brafman?

12 THE DEFENDANT: Yes, I have, your Honor.

13 THE COURT: OK. And having listened to his advice but
14 knowing from me that it's your decision, is it, in fact, your
15 decision not to testify?

16 THE DEFENDANT: Yes, it is, your Honor.

17 THE COURT: Do you understand that at some time if the
18 worst happens and you get convicted, that you're not going to
19 be able to argue that you wanted to testify but we somehow kept
20 you from testifying or that Mr. Brafman didn't tell you you
21 could testify or that I didn't tell you you could testify?
22 You're waiving all those arguments. Do you understand that?

23 THE DEFENDANT: Yes, I do, your Honor.

24 THE COURT: OK. Thank you, sir.

25 MR. BRAFMAN: Your Honor, can I ask on scheduling,

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1 just to figure out today? Can I assume that after I rest, that
2 the Court will have a brief charging conference?

3 THE COURT: No. We're going to have it right now
4 because the jurors are out of the room.

5 MR. BRAFMAN: Yes.

6 THE COURT: That's why I wanted to know if you were
7 going to rest.

8 MR. BRAFMAN: Thank you.

9 THE COURT: So let's just do that.

10 I could use a copy of the charge, which I don't seem
11 to have in front of me. This is the charge that was given to
12 them?

13 THE LAW CLERK: Yes.

14 THE COURT: With nothing added. OK.

15 Jesus, take about a year and a half to give this
16 charge.

17 All right. The government has sent a letter saying
18 that it has some small requests, but that it principally wants
19 the Court to add the language that I used in the *Annabi* case,
20 which was another public official bribery case, about dual
21 intent. I will hear argument from the defense, though my
22 inclination is to add the language.

23 MR. SOLOWIEJCZYK: Your Honor, could we just clarify
24 one thing? In the letter it said this is the first time the
25 government's raising this. We actually did request --

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1 THE COURT: You did. We overlooked it, OK?

2 MR. SOLOWIEJCZYK: Just wanted to note that for the
3 record.

4 THE COURT: Wouldn't matter if it were the first time.
5 You can raise it anytime up to the moment I stop charging, OK,
6 and there's no bias, no prejudice. They can't say you've
7 waived it. You've waived it when I stop charging and send them
8 back to deliberate, OK? Fine. You haven't waived it.

9 Mr. Brafman, are you going to argue this? Is one of
10 your colleagues going to argue this? Who's going to?

11 MR. BRAFMAN: Well, I think we made note of it in our
12 letter to the Court. I understand the law in terms of being
13 able to give the Court discussions. I think, however, the
14 issue was made clear by me in my opening statement. They refer
15 to that fact, and yet they waited until all of the
16 cross-examinations were complete to raise the issue with the
17 Court even though they submitted a request to charge. I'm just
18 pointing that out.

19 THE COURT: Fine. All right. So you'll get your
20 *Annabi* language.

21 MR. BRAFMAN: I object to the charge.

22 THE COURT: And you object.

23 MR. BRAFMAN: So if it could be noted if we could just
24 have an understanding of what your Honor's going to say before
25 we actually start the summation.

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1 THE COURT: Yes, more or less what's quoted in the
2 government's letter, but let's move on. The government had
3 some other small issues.

4 MR. SOLOWIEJCZYK: Yes, your Honor. These are all
5 relatively minor. At page 16, the accomplice testimony
6 section --

7 THE COURT: I'm sorry. Hang on. Page 16, accomplice,
8 yes.

9 MR. SOLOWIEJCZYK: So there's discussion here in the
10 plural regarding cooperating witnesses. We would just ask that
11 it be made singular so it's clear there's actually only one
12 cooperating witness.

13 MR. BRAFMAN: Are you on the same page 16 that I am?

14 THE COURT: Find one that's headed "Accomplice
15 Testimony."

16 MR. BRAFMAN: I have it, your Honor. I also note that
17 there's Mr. Connelly and Mr. Black named in this. I assume
18 that will come out.

19 THE COURT: Yes.

20 THE LAW CLERK: You're on page 16, though, right?

21 THE COURT: Never try Mr. Connelly and Mr. Black
22 again.

23 Has anyone pleaded guilty in this case? No.

24 MR. SOLOWIEJCZYK: Yes.

25 THE COURT: Who had a guilty plea?

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1 MR. SOLOWIEJCZYK: Mr. Velez did.

2 THE COURT: Or Mr. Velez, OK.

3 So this is going to say: Mr. Velez, the cooperating
4 witness in this case, pleaded guilty about the defendant --
5 from the fact that a prosecution witness pleaded guilty.

6 Mr. Issa -- I think Jim just threw this in because he
7 didn't know if we were going to include it or not, about
8 Mr. Issa's guilt. It will say: "Mr. Velez, the cooperating
9 witness in this case, pleaded guilty to charges arising out of
10 the same facts that are at issue in this case. You may not
11 draw any conclusions or inferences of any kind about the guilt
12 of the defendant from the fact that a prosecution witness
13 pleaded guilty to similar charges. The decision of any witness
14 to plead guilty was a personal decision he made about his own
15 guilt. Nobody else's plea is evidence against Mr. Issa. So
16 you may not consider or draw any conclusion about Mr. Issa's
17 guilt based on the fact that a cooperating witness pled
18 guilty."

19 All right. So that's what page 16 will be. All
20 right. Next.

21 MR. SOLOWIEJCZYK: On page 17, just to make life easy,
22 the two immunized witnesses are Sohail Butt and Claudia
23 Betancourt.

24 THE COURT: I'm sorry?

25 MR. SOLOWIEJCZYK: I can spell them.

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1 THE COURT: You heard testimony from two witnesses,
2 yes.

3 MR. SOLOWIEJCZYK: Sohail Butt, S-o-h-a-i-l, last name
4 B-u-t-t, and Claudia.

5 THE COURT: Betancourt.

6 MR. SOLOWIEJCZYK: B-e-t-a-n --

7 THE COURT: I know, B-e-t-a-n-c-o-u-r-t. Got that.

8 MR. SOLOWIEJCZYK: OK.

9 THE COURT: OK.

10 MR. SOLOWIEJCZYK: Your Honor, at page 68, which is
11 the description of the overt acts --

12 THE COURT: Yes.

13 MR. SOLOWIEJCZYK: -- right now it calls them Tax
14 Preparer 1, Issa Company 1, Issa Company 3. They're all
15 anonymized.

16 THE COURT: That's right, that's what it says in the
17 indictment.

18 MR. SOLOWIEJCZYK: Is there any way the Court would
19 change it to the actual name?

20 MR. BRAFMAN: I object to that. It's not in the
21 indictment.

22 THE COURT: It's not in the indictment. It's in the
23 evidence. I'm not going to change what's in the indictment.
24 We will add after reading this paragraph B of the indictment:
25 Issa Company 1 --

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1 MR. SOLOWIEJCZYK: Is First Star Auto.

2 THE COURT: -- is First Star Auto. CC-1 is --

3 MR. SOLOWIEJCZYK: Is Daniela Silva.

4 THE COURT: -- Daniela Silva.

5 MR. SOLOWIEJCZYK: Tax Preparer 1 is Chris Tsamutalis.

6 THE COURT: Tax Preparer 1 is Chris Tsamutalis. And

7 Tax Preparer 2 --

8 MR. SOLOWIEJCZYK: Tax Preparer 2 is George Mousouris.

9 THE COURT: Is George -- how do you spell his name?

10 MR. SOLOWIEJCZYK: M-o-u-s-o-u-r-i-s, I believe.

11 THE COURT: Yes. And then Company 3, Issa Company 3,

12 is?

13 MR. SOLOWIEJCZYK: We believe it's -- we're checking
14 right now. We're pretty positive it's High Powered Auto, but
15 we're confirming that right now. If for some reason that's
16 wrong, your Honor --

17 MR. BRAFMAN: I sure hope you would know by now.

18 THE COURT: I would certainly hope you would know by
19 now. You've listed it.

20 MR. SOLOWIEJCZYK: Mr. Issa has so many companies it's
21 hard to keep track of all the companies. If that's wrong,
22 we'll let your Honor know ASAP, but it's High Powered Auto.

23 THE COURT: You better.

24 MR. SOLOWIEJCZYK: Give me one sec.

25 Oh, yes. Your Honor, there's one more, and I'm

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1 actually going to turn it over to Mr. Wirshba because he
2 understands tax law way better than I do at this point.

3 THE COURT: Really?

4 MR. SOLOWIEJCZYK: If you couldn't tell. So on
5 page 73, in describing the distribution -- I'm just going to
6 let Mr. Wirshba explain. I'm going to bungle it.

7 MR. WIRSHBA: Your Honor, my understanding is that
8 this last term on page 73 with respect to this proposed
9 instruction, it says "taxable dividend" --

10 THE COURT: Look, what language do you want me to
11 change?

12 MR. WIRSHBA: Of course. "Taxable dividend" to
13 "capital gain."

14 THE COURT: Where's the word, where on the page?

15 MR. WIRSHBA: It's the last two words on page 73.

16 THE COURT: You want "taxable dividend" to be changed
17 to "capital gain"?

18 MR. WIRSHBA: Yes, ma'am.

19 THE COURT: Fine. It's the kind of question I would
20 ask my accountant.

21 MR. WIRSHBA: As would I, your Honor.

22 MR. BRAFMAN: Your Honor.

23 THE COURT: Yes. Is that it from the government?

24 MR. WIRSHBA: Yes, your Honor, that's all from the
25 government.

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1 MR. BRAFMAN: Just for the record, we object to that
2 change. I don't think that's what the evidence is. I think
3 you can argue it, but I don't think it's a matter of law that
4 that's what the evidence is.

5 MR. SOLOWIEJCZYK: We can explain it, your Honor, why
6 the change.

7 THE COURT: Well, I thought you were telling me what
8 the law is. OK. What's the law?

9 MR. WIRSHBA: Your Honor, that is the law from
10 *Boulware* and that Second Circuit case that you referenced.
11 Your Honor, once the earnings.

12 THE COURT: *Bok*.

13 MR. WIRSHBA: *Bok*, yes, your Honor. My understanding,
14 once the accumulated earnings and profits of a corporation have
15 been exhausted, it is no longer possible that a distribution
16 from that company can be considered a dividend because there
17 are no accumulated earnings and profits. At that time, the
18 courts have said that a distribution from that company is
19 considered to be taxed like a long-term capital gain, and
20 that's why we're requesting --

21 MR. BRAFMAN: Your Honor, that's a factual
22 determination. We did not ask for this charge. The testimony
23 is on both sides of that coin. And if your Honor's making a
24 factual determination, it's essentially marshaling the
25 evidence.

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1 THE COURT: It's not a factual determination.

2 MR. WIRSHBA: Your Honor, we would consent to leaving
3 this charge out completely.

4 THE COURT: Which one? The whole Section 301(c)(2)?
5 You asked for it.

6 MR. WIRSHBA: No, your Honor. I don't believe we did
7 ask for that.

8 THE COURT: Well, I can't very well leave it out.
9 It's the *Bok* charge. Given the way this case has come in, I
10 can't very well leave it out, can I?

11 MR. BRAFMAN: I think you can because no one is
12 requesting it.

13 THE COURT: Fine. You don't want it, your problem.

14 MR. BRAFMAN: Thank you. Thank you.

15 Your Honor, can I make one observation and ask? I
16 have, other than the objections I previously noted on page 44,
17 your Honor --

18 THE COURT: Yes.

19 MR. BRAFMAN: -- in the middle of the page --

20 THE COURT: Mr. O'Neill has changed some pages, so
21 what's the heading at the top of the --

22 MR. BRAFMAN: There is no heading at the top.

23 THE COURT: What are the words at the top of the page?

24 MR. BRAFMAN: Inferences to be --

25 THE COURT: To be drawn, it's actually 44, great.

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1 MR. BRAFMAN: I thought it was. The lower part of the
2 page, about two and a half paragraphs, you discuss the issue of
3 conscious avoidance. I would object to a charge on conscious
4 avoidance. I don't think the evidence in this case warrants
5 it. This is an intentional crime that's been charged. All of
6 the evidence suggests Mr. Issa either did this intentionally or
7 he did not, and I don't know that any witness testified that
8 Mr. Issa consciously avoided his obligations.

9 THE COURT: I'm interested. There's a conscious
10 avoidance charge both here and in the tax count. I've never
11 not charged conscious avoidance in a tax case. I'm curious why
12 the government thinks it's an appropriate charge for the
13 bribery counts. What's the view of the evidence that would
14 warrant a conscious avoidance charge?

15 MR. SOLOWIEJCZYK: Your Honor, I actually don't think
16 it's -- I think it's only in for the tax counts right now, and
17 we're not seeking it for bribery or theft of government funds.

18 THE COURT: As long as it's in for the tax counts, it
19 stays in. OK. I thought it was in twice.

20 MR. BRAFMAN: Your Honor, in terms of the order this
21 morning, I know the Court has given the government 90 minutes,
22 you've given defendant 90 minutes, and then government a
23 half-hour. It is now almost 11 o'clock. If we could ask, one,
24 if I could step out for a minute before we start?

25 THE COURT: Yes.

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1 MR. BRAFMAN: And, second, if the government starts
2 and goes 90 minutes, it would bring us right to a lunch break.

3 THE COURT: Indeed, not only a lunch break, a lunch
4 break at which Chief Judge McMahon has to make an appearance at
5 two events, so you would start right after lunch.

6 MR. BRAFMAN: Thank you.

7 THE COURT: In fact, it looks to me that's exactly the
8 way it's going to break.

9 MR. BRAFMAN: Thank you.

10 THE COURT: OK.

11 MR. BRAFMAN: Yes, yes, I'm sorry, Judge. There was
12 one ask that we submitted in writing. Mr. Gold just remind me
13 we had asked for a curative instruction that the defendant is
14 not charged with violating the post office regulations.

15 THE COURT: I'm perfectly happy to put in that
16 language.

17 MR. BRAFMAN: Thank you, your Honor.

18 MR. SOLOWIEJCZYK: Your Honor, we object to that
19 language for a number of reasons, particularly as proposed by
20 the defense. Just because there may be postal rules that are
21 coextensive with the bribery law doesn't mean that the postal
22 rules are somehow --

23 THE COURT: You know what? I'm perfectly capable of
24 crafting a charge that says he's not charged with violating
25 ethics rules or the post office rules. He's charged with

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1 bribery. It may be you may conclude that post office rules and
2 the bribery statute are coextensive, or overlapping, but please
3 understand it is the bribery statute that he's charged with
4 violating. I can do that. I'm quite capable of doing that.

5 MR. BRAFMAN: And your Honor --

6 MR. SOLOWIEJCZYK: Thank you, your Honor.

7 MR. BRAFMAN: One other ask in the same letter was
8 that the defendant is also not charged with any violations
9 relating to a withholding tax or cash payroll or any of those
10 things that might arise in a juror's mind as to why you didn't
11 do that. Those are state charges, generally. It's a
12 one-sentence ask, your Honor.

13 THE COURT: I'm trying to find the language you
14 wanted. I had no difficulty. I'll find a place to put it in,
15 OK? I'd like five minutes to think.

16 MR. SOLOWIEJCZYK: Your Honor, is it your intention to
17 go straight to closing statements from here right now?

18 THE COURT: Well, they're going to rest, I'll charge,
19 you'll start. Yes, absolutely.

20 MR. SOLOWIEJCZYK: OK.

21 THE COURT: The minute the jury comes in, he'll rest,
22 you won't have any redirect/rebuttal case because he's resting,
23 I'll give the jury their preliminary charges, and somebody
24 better be ready to close.

25 MR. SOLOWIEJCZYK: OK. We'll be ready.

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1 MR. BRAFMAN: Your Honor, the Court is denying our
2 application in our December 14 letter with respect to the
3 *Silver* issue and the prolific and perfunctory nature of the
4 work that's being done?

5 THE COURT: Oh, yeah, that's the dumbest argument I
6 ever read.

7 MR. BRAFMAN: I appreciate the Court's observation. I
8 think it's a pretty good ask, but I understand, your Honor.

9 THE COURT: It's a good ask.

10 (Lunch recess)

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1 THE COURT: Case on trial continued, parties are
2 present, jury is not. Just so you know, this is what I will
3 add at the very end of the substantive charge.

4 THE DEPUTY CLERK: Jury?

5 THE COURT: Please.

6 (Continued on next page)
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1 (Jury present)

2 THE COURT: Okay. Have a seat, please.

3 Mr. Brafman, does the defendant wish to put on a case?

4 MR. BRAFMAN: Defense rests, your Honor.

5 THE COURT: Thank you.

6 Ladies and gentlemen, as I told you at the beginning,
7 the government has to put on a case. The defense does not have
8 to put on a case because the defense has nothing to prove.
9 Even at this moment we are presuming that Mr. Issa is innocent
10 of the crimes with which he has been charged and Mr. Brafman
11 and his client have decided that they're going to argue to you
12 from the evidence that you have heard that the government has
13 failed in its burden, that it has failed to overcome the
14 presumption of innocence that the credible evidence is
15 insufficient to convict the defendant of any of these crimes
16 and so, we are going to turn to the arguments of the lawyers.

17 At this point, the lawyers are going to take the
18 evidence that you have heard and they're going to paint a
19 picture for you with that evidence, and it will come as no
20 surprise to you to learn that the two lawyers from the front
21 and the back tables will paint two very different pictures with
22 that evidence. They're going to argue the case, they're going
23 to ask you to draw inferences or conclusions from the evidence
24 that you have heard. If what a lawyer suggests to you seems
25 like a rational conclusion for you to draw from evidence that

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1 you find to have been believable and persuasive, then you are
2 perfectly free to accept the lawyers' suggestion and draw that
3 conclusion. If, however, you are not satisfied that the
4 conclusion you are asked to draw makes any sense to you, or if
5 it doesn't accord with the evidence that you, the members of
6 the jury, find to be believable and persuasive, then you will
7 just reject the lawyers' suggestion and you will draw your own
8 conclusion based on your reason and common sense and the
9 evidence that you find to be believable and persuasive.

10 The arguments follow rules as does everything else in
11 a trial so there are rules for making summations. And if a
12 lawyer is perceived by his or her opponent to run afoul of the
13 rules, then someone will jump up and say "objection" from the
14 other table. I will rule on the objection.

15 Please, I just take this opportunity to remind you, I
16 don't have a position in this matter. My rulings on objections
17 are not intended to send you any kind of a semaphore signal
18 that I think this side or that side has the better of the
19 arguments in this case. All right? I am just being the ref
20 and enforcing the rules and we have rules for summations. So,
21 if there are any objections during the summations, I will
22 enforce the rules.

23 The lawyers will speak to you in colloquial English so
24 they'll probably say "I think" or "I believe." At some point
25 during the course of the summations that's because we always

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1 say that in the course of our every day speech. What they mean
2 is I submit the following for your consideration because the
3 only people whose thoughts or beliefs we really care about are
4 your thoughts and beliefs at this stage of the case. But, I
5 submit the following for your consideration is an awfully
6 cumbersome locution. So, if the lawyers tell what you they
7 think or they believe they're not turning themselves into
8 witnesses, remember that. Remember always that what the
9 lawyers say to you is not evidence. So, if a lawyer makes an
10 argument based on something that you don't recall being in
11 evidence you are to ignore that argument because all of the
12 arguments must, of course, be grounded in the evidence.

13 Now, the party that bears the burden of proof gets the
14 opportunity to open first, to give its closing argument first,
15 so we will, this morning, hear from the government. This
16 afternoon we will hear from the defense after lunch, and then
17 the government will get one last shot because it has the burden
18 of overcoming the presumption of innocence so it will be able
19 to make a brief rebuttal. And the way everything has timed out
20 is beautiful because everybody can -- we will have government
21 summation first, you will have your lunch, we will have defense
22 summation, and the government's rebuttal. I will charge in the
23 morning. The reason being that the charge is sufficiently long
24 that I don't want to break it up. I just want to take you to
25 law school one time.

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Summation - Mr. Wirshba

1 Mr. Wirshba, are you ready?

2 MR. WIRSHBA: Yes, your Honor.

3 THE COURT: All right. The government may close.

4 MR. WIRSHBA: If you don't know how to hide, don't
5 steal. This is the saying by which Tony Issa led his life.
6 This is his motto. And he stole every chance he got. He stole
7 through his bribes, he stole through his bogus bills, and he
8 stole through his taxes and, in every instance, Tony Issa
9 thought he hid his crimes. But he was wrong.

10 In this courtroom over the last two weeks all of Tony
11 Issa's crimes have been laid before you. Issa has been exposed
12 for the thief that he is. Having seen the witnesses and the
13 evidence in this case you now know that Tony Issa bribed public
14 officials, that he stole public money, and that he cheated on
15 his taxes. Tony Issa tried to cheat the system time and again
16 in any way that he could. Now you must hold him accountable
17 for these crimes and find him guilty on all counts.

18 Ladies and gentlemen, this closing argument is the
19 government's opportunity to bring all of the evidence together
20 to show you why Tony Issa is guilty of bribing public officials
21 in exchange for lucrative postal service contracts and repair
22 work, why he is guilty of stealing government funds by padding
23 his bills with double charges and work that was never
24 authorized, and why he is guilty of lying on his corporate and
25 personal tax returns in order to avoid paying what he really

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Summation - Mr. Wirshba

1 owed. In each instance, Mr. Issa tried to cheat the system and
2 in each case he got caught red-handed. Let's start with the
3 bribery.

4 Ladies and gentlemen, the government has proven beyond
5 a reasonable doubt that Tony Issa bribed three different
6 officials -- Jim Nicholson, Jeffrey Blight, and Ismael "Izzy"
7 Velez. Each was a manager of his own VMF, his own vehicle
8 maintenance facility. Each was in charge of his own set of
9 postal trucks that Tony Issa wanted desperately to get into his
10 shop, and each was a potential source of lucrative vehicle
11 repair work for Issa's companies. So, what did Tony Issa do?
12 How did Tony Issa make sure that his companies got work from
13 these VMF managers? Did he play by the rules? No. He cheated
14 the system. He paid Nicholson, paid Blight, paid Velez in
15 meals, trips, gifts, and cash. And in exchange he wanted and
16 expected work, as much of it as he could get. You heard this
17 play out not once, not twice, but three times. But before we
18 begin, let's start with the basics: What is a bribe under the
19 law?

20 Well, you should listen extremely carefully when Judge
21 McMahon instructs you on the law and whatever she says, that's
22 what should control. That said, I expect that she will tell
23 you at the heart of bribery is a *quid pro quo*. Now, you have
24 already heard that term quite a bit during this trial, mostly
25 from the defendant himself on the tapes, and it means exactly

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Summation - Mr. Wirshba

1 what Issa said it means. This, for that. You scratch my back,
2 I'll scratch yours.

3 So, let's start with something very basic but also
4 extremely important. There is no dispute that Tony Issa
5 provided gifts, meals, trips, and cash to postal service VMF
6 managers. In fact, Tony Issa had a playbook for situations
7 just like these. You know this playbook because you saw it
8 over and over again.

9 So, what's the first step in the Tony Issa playbook?
10 The first step is caution. It's to start a VMF manager with
11 something small. For Nicholson, it was a meal at the Olive
12 Garden. For Jeffrey Blight, some sushi. And for Ismael Velez,
13 a burger at Jimbo's. The first step, it is a test. See if the
14 VMF manager insisted on paying, evaluate whether a prosperous
15 relationship was possible.

16 Step two, escalate to expensive dinner and drinks.
17 Nicholson, he got Smith & Wollensky's with endless crab, steak
18 and shrimp, and at the end of the Issa bought Nicholson even
19 more ordering items to go for Nicholson's wife. You remember
20 that because you heard it on the tapes. How much was that
21 meal? You saw the evidence, Government Exhibit 3520, it came
22 to approximately \$650.

23 What about Jeff Blight? It escalated with him, too.
24 Jeff Blight, he got Roast Detroit, a restaurant near Blight's
25 home where Issa spent \$527.32 on dinner for two, and you can

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Summation - Mr. Wirshba

1 see it in Government Exhibit 551B.

2 Velez, he also received meals and drinks at Frankie &
3 Johnnie's, a nice restaurant in the Bronx.

4 And if steps one and two of the Tony Issa playbook
5 went over without incident, that's when things really started
6 to get good because step three of the Tony Issa playbook is
7 when Issa started offering and providing free trips and gifts.
8 For Nicholson, it was additional meals, sure, and you have seen
9 those receipts at Wolfgang's and at Blackstone Steakhouse, but
10 it was also an offer of a fishing trip, also the gift of a
11 tablet computer, also tequila, scotch, and bottle after bottle
12 of wine.

13 Now, Blight and Velez, they were also treated to
14 trips. For Blight, a trip to New York where he was wined and
15 dined by Issa and his staff. For Velez, trips to Miami where
16 he and Issa relaxed and partied. Issa and Velez went to
17 Tootsie's, that strip club that you have heard oh so much
18 about.

19 For all of these trips, Velez and Blight told you that
20 they paid for the trips themselves initially and that they
21 expected that Issa would reimburse them with cash -- a move
22 straight out of the Tony Issa playbook. Also straight out of
23 the Tony Issa playbook, the payment of cash once the meals,
24 gifts, and trips were established. For Velez it had been
25 happening before years long before Issa knew Nicholson and

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Summation - Mr. Wirshba

1 Blight. You heard from Mr. Velez and he told you it started
2 with \$200 tossed into a car, then \$200 a week from one of
3 Mr. Issa's gas stations, followed by increasing amounts until
4 Velez was eventually being paid \$1,500 a week.

5 For Blight, it happened at the end of his time in New
6 York when Tony Issa asked for the cost of the trip and in
7 return Blight received \$2,000 cash, under the table, in a
8 napkin, nearly double what he had told Mr. Issa the trip cost.
9 No worries, Tony Issa said. Everything is good. \$2,000
10 literally under the table.

11 Let's watch the video as it unfolds.

12 (Audiofile played).

13 MR. WIRSHBA: What Nicholson, Blight, and Velez got
14 from Tony Issa the defense cannot reasonably dispute. But
15 equally as clear is what Issa got from Nicholson, Blight, and
16 Velez. In exchange for these meals, gifts, trips, and cash,
17 Tony Issa got millions of dollars in repair work. He filled
18 his garages with postal trucks and with preventive maintenance
19 inspections, or PMIs. Lots of PMIs.

20 Ladies and gentlemen, respectfully, that's no
21 coincidence. The reason Tony Issa was giving away all this
22 free stuff, these free meals, straight up cash to these VMF
23 managers is exactly what your common sense tells you: He
24 wanted work in return. This was the *quo* in the *quid pro quo*.
25 This is what makes Issa's gifts bribery.

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Summation - Mr. Wirshba

1 Now, before I move on let me say one more thing about
2 Nicholson and Blight. They each separately came forward, on
3 their own, to tell the postal service Office of Inspector
4 General -- what has been referred to in this trial as the
5 OIG -- about Tony Issa. As you heard from Jim Nicholson, he
6 never heard of or met Jeff Blight. Two separate postal service
7 VMF managers who each separately reported their concerns about
8 Tony Issa to OIG. The fact that Issa raised red flags with two
9 different VMF managers in two entirely different parts of the
10 country, that's no coincidence, ladies and gentlemen.

11 Now, Issa's conduct with each of these three VMF
12 managers standing alone, each, is compelling proof of bribery.
13 All three in a position to decide whether Issa's companies
14 succeeded or failed, received things of value from Issa. And,
15 when taken together, Issa's behavior with all three managers
16 leaves absolutely no doubt about what Issa was after. How he
17 sought to get it and how he planned to conceal it.

18 Now, I expect that Judge McMahon will tell you that in
19 order to convict for bribery you will need to find beyond a
20 reasonable doubt that the defendant gave, promised, or offered
21 money or a thing of value with a corrupt intent to influence an
22 official act. We have already gone through what Issa gave --
23 meals, trips, gifts, cash, and you know what he received in
24 return -- work, including those lucrative, lucrative PMIs. But
25 you also know from the testimony and evidence presented here

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Summation - Mr. Wirshba

1 that Issa intended to obtain work in return for the things of
2 value that he was providing to his three VMF managers. You
3 know it because when you use your common sense there is just no
4 other reasonable explanation. When you look closely at the
5 evidence in this case, it's simply overwhelming. When Issa
6 paid for VMF managers to eat, drink, and be merry, he wasn't
7 doing it to be a nice guy or out of the goodness of his heart.
8 No. He was doing it because he expected work. He expected the
9 VMF managers to fill his garages with vehicle repairs.

10 Now, let's make one thing very clear. Tony Issa, he
11 never came out and said, hey, VMF manager when I pay for your
12 steak I want you to exchange the steak for repair work. Of
13 course he didn't. Criminals, especially criminals who are
14 aware of the dangers of a *quid pro quo*, they don't announce
15 that they're doing something illegal. Criminals carefully hide
16 their illegal activity and illegal intent any way that they
17 can. Nonetheless, here, for Tony Issa, that intent is clear.
18 And, in addition, I expect that Judge McMahon will instruct
19 you, and of course her words, they always control, but I expect
20 that she will instruct you that as to bribery, you need not
21 find that the intent of the defendant was entirely corrupt.
22 The defendant, he could be found to have the requisite intent
23 even if he possessed a dual intent, that is, partly a corrupt
24 intent and partly an innocent one, a valid purpose like
25 friendship, I expect that Judge McMahon will instruct you but,

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Summation - Mr. Wirshba

1 again, her words control. A valid purpose like friendship that
2 partially motivates a payment does not insulate the defendant
3 if any part of his motivation was corrupt. By the same token,
4 the government must prove beyond a reasonable doubt that some
5 part of the defendant's motive was corrupt but not all.

6 So, how do you know that Tony Issa intended to pay
7 bribes? How do you know that he intended to get something in
8 return for his meals, gifts, and cash? Three ways. First, you
9 know that because you have heard Tony Issa explicitly ask for
10 work in exchange for meals. Second, you know because Issa all
11 but admitted on tape that he knew what he was doing was wrong.
12 Third, you know because of how badly Tony Issa tried to hide
13 what he was doing with Nicholson, with Blight, and with Velez.

14 So, let's start with the first way you know that Tony
15 Issa intended to pay bribes. You know because he said so. In
16 this case you hardly have to guess at Mr. Issa's intentions
17 because you can listen to the words right out of his mouth and
18 those words, they tell you everything you need to know about
19 why he was giving money, meals, and gifts to VMF managers.

20 Let's start with Blight's July 11th, 2016 dinner at
21 Roast Detroit, you are going to find the transcript of that at
22 Government Exhibit 307C. And, ladies and gentlemen, as I am
23 going through my presentation today you will notice that we
24 include the government exhibit sticker right there in case
25 later on, when you are deliberating, you want to go back and

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Summation - Mr. Wirshba

1 look. I will do my best to also mention them when they're
2 there.

3 Now, during this \$500 meal in which Mr. Issa promises,
4 among other things, to bring Blight to New York on Mr. Issa's
5 dime, Issa says, *All I ask is that you got work to do? We do*
6 *it for you.*

7 Similarly, look at Issa's January 15th meal with
8 Nicholson at Wolfgang's at Government Exhibit 303. During this
9 expensive and extravagant meal Issa repeatedly asked Nicholson
10 for PMI work. Issa sells Nicholson: *Let me help you with the*
11 *PMIs.* He says it twice. In practically two sentences further
12 offering that the money, it's coming out of the USPS, not out
13 of Nicholson's pocket.

14 Now, this is hardly Tony Issa's only mention of PMIs.
15 Look here again, Government Exhibit 303I. Here Issa again
16 asked for PMIs, look at how many times he asked. He says it
17 himself: *It's all he's looking for.*

18 Now, giving something of value and in the next breath
19 asking for something in return, that's how a *quid pro quo*
20 works. Basically, Tony Issa is saying, oh hey, here is this
21 thing of value, here is this Tablet computer. It's not a bribe
22 but, hey, can I get that PMI work? Can I get that PMI work?
23 Can I get that PMI work? Over and over and over again.

24 Now, most circumstances, the mere fact that an
25 individual is asking for a *quid pro quo* -- while he is asking

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Summation - Mr. Wirshba

1 for a quid, that is the thing that he wants during a quo. Here
2 he is asking for work during a meal that was paid for by Issa.
3 In most circumstances that would be enough to infer intent.
4 But here, ladies and gentlemen, you have even more than that.
5 Here Issa tells you that he expects work in exchange for these
6 generosities. Let's take a look at Government Exhibit 303D and
7 let's listen to Tony Issa's own words.

8 (Audiofile played)

9 MR. WIRSHBA: Now, ladies and gentlemen, these
10 statements by Issa, they tell you everything you need to know.
11 Use your common sense. What does Tony Issa mean when he says
12 it's a two-way street? What did Tony Issa mean when he says we
13 help each other, just before saying, *You have to get those*
14 *trucks fixed anyway, right?* Ask yourself when you are
15 deliberating how can Nicholson help Issa? One way, and one way
16 only. Nicholson can get more work for Issa's shops. That's
17 the two-way street that Tony Issa is talking about. This, for
18 that, an acknowledgment that what he is asking for is *quid pro*
19 *quo*, even if on this very clip he doesn't want to call it that.
20 And this isn't the only time that Tony Issa makes that *quid pro*
21 *quo* explicit even if he says it's not.

22 Taking a look at another clip from Government Exhibit
23 303, Tony Issa references the Mafia and discusses the
24 importance of trust. He says we have a mutual relationship
25 that we can both benefit from, that's right, that we can both

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Summation - Mr. Wirshba

1 benefit from. Ask yourself, what is the benefit to Jim
2 Nicholson? Easy, it's the food, it's the booze, it's the
3 gifts. And then ask yourself what is the benefit to Tony Issa?
4 Also easy. It's work. Tons and tons of U.S. Postal Service
5 work, PMIs and all.

6 Now, what's the second way that you know that Tony
7 Issa intended a *quid pro quo*? The second way you know that
8 Tony Issa had an intent to bribe is that the evidence shows
9 that he knew that what he was doing was wrong. Start with the
10 fact that you heard the tapes, you heard Nicholson repeatedly
11 telling Tony over and over again that he wasn't supposed to be
12 accepting meals for gifts. Nicholson, he sounded like a broken
13 record. Each time Tony Issa brushes him off because Nicholson
14 is telling Issa what he already knows, that Tony Issa is
15 proposing something that's illegal. Tony Issa, he just doesn't
16 care. How else do Tony Issa's words tell you that he knows
17 what he is doing is wrong? Look at how many times Issa brings
18 up and insists that what he is doing is perfectly legal. Look
19 at all these mentions of no *quid pro quo*.

20 Ladies and gentlemen, ask yourself who talks like
21 that? Who continuously and repeatedly talks about how what
22 they are doing is on the right side of the law. Use your
23 common sense, ladies and gentlemen. People only talk about
24 being law-abiding and doing law-abiding things when what
25 they're actually doing is not law-abiding.

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Summation - Mr. Wirshba

1 You know who talks about doing not law-abiding
2 things -- or about doing law-abiding things constantly? People
3 like Tony Issa, people who are trying to convince the world
4 that they're not doing something illegal. But Tony Issa, he
5 knows exactly what he is doing because he knows that even if he
6 says no *quid pro quo*, he is asking for a two-way street.

7 Now, what's the third way that you know that Tony Issa
8 knew that what he was doing was wrong? The third way is that
9 you heard, time and again, that Tony Issa went to great lengths
10 to hide what he was doing with these VMF managers and that
11 tells you that Issa knew that he was paying bribes because when
12 people know that what they are doing is wrong, they try to hide
13 it, and that's exactly what the defendant did. After all, to
14 use Tony Issa's words, if you don't know how to hide, don't get
15 in the game.

16 So, how did Tony Issa hide? By insisting on secrecy
17 and by taking steps to conceal the truth. Over and over again
18 in these tapes Tony Issa insisted on loyalty and silence. Issa
19 repeatedly directed Nicholson that they must keep their
20 arrangement, the gifts and the meals a secret. Here in
21 Government Exhibit 303H, Issa tells Nicholson it is their
22 little secret and he likens their relationship to two married
23 people having an affair. In this next slide Issa tells
24 Nicholson he doesn't want to advertise what is happening
25 because, you know, of how it might look. Consider what happens

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Summation - Mr. Wirshba

1 when Nicholson asks Issa if he had lunches with other U.S. Post
2 Office officials. What did Issa say in response? "Even if I
3 did, I would never tell you." Followed by, "What happens
4 between us, stays between us." This is both a reassurance and
5 a warning. I will protect you but you better not talk about
6 our arrangement.

7 In addition to just talking about keeping the bribe
8 secret, Tony Issa took affirmative steps to ensure that his
9 bribes, that they would go undetected. Remember Tony's motto.
10 If you don't know how to hide, don't steal.

11 Take the tablet computer. What Mr. Brafman referred
12 to in his opening statement is akin to a pen at a bank. I
13 don't know about you, ladies and gentlemen, but no one has ever
14 handed me a Dell tablet at a branch for free. Now, you will
15 remember this tablet because Nicholson discussed it with Tony
16 Issa at length. Issa first brought up the tablet at Smith &
17 Wollensky's. In his opening, Mr. Brafman told you it was
18 Nicholson that suggested wiping the tablet but that's just not
19 what happened and now you, ladies and gentlemen, you have seen
20 the evidence. Take a look at what really happened.

21 Government Exhibit 302G. Issa said to Nicholson: I
22 got that computer for you but the reason I didn't bring it
23 today is because it was designed to advertise, so when you open
24 it up every time it says Daimner, one of Mr. Issa's companies.
25 So, I still got to remove that.

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Summation - Mr. Wirshba

1 It was Issa who said he needed to remove his company's
2 name and it was Issa, after all, who knows how to hide and,
3 indeed, when Nicholson expressed concern about taking such an
4 expensive item, Tony Issa reassured him. I already know you
5 got to be careful, that's why I don't want it to say Daimner.

6 Issa also sought to hide his payments to the VMF
7 managers in other ways. Velez, for example, he put his trips
8 on his own credit card so that he could be reimbursed with
9 cash. Similarly, before Bright's trip to New York, Issa told
10 him to book travel on his own credit card and that Issa would
11 later reimburse him. Then, with Blight, you got to see that
12 reimbursement, straight out of the Tony Issa playbook. That,
13 too, showed the length that Tony Issa would take to conceal his
14 illegal conduct. Even far away from Detroit, at a random
15 restaurant in Chinatown, Tony Issa felt he had to wait for his
16 employee to leave the table and even then slipped the cash
17 under the table in a napkin, cash that, by the way, far
18 exceeded the supposed cost of Blight's trip.

19 Issa also told Velez as another example of how Tony
20 Issa tried to hide, to stop depositing the bribe money into his
21 bank account because, after all, it could be traced. You have
22 heard Mr. Velez say that, ladies and gentlemen. This
23 concealment, this constant concealment, it's clear evidence of
24 Tony Issa's consciousness of his own guilt.

25 Another way that you know that Tony Issa was aware

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Summation - Mr. Wirshba

1 that his bribes were illegal is that, at times, Issa's words
2 and actions, they appear to descend into paranoia. Paranoia
3 that your common sense will tell you is a sign of Tony Issa's
4 knowledge that what he was doing was wrong.

5 Let's look at Government Exhibit 303H. This is the
6 time that Tony Issa went to the bathroom while at dinner with
7 Nicholson. And what does Issa say when he gets back to the
8 table? He says he has been thinking about whether Nicholson is
9 going to rat him out by revealing their illegal arrangement.
10 What is he going to gain from effing you? Tony says out loud.
11 Or take the next example, Tony Issa's insistence that he
12 doesn't trust phones. Never say a thing on the phone other
13 than legitimate business, Tony instructed. Who says that?
14 Would a legitimate business person say that? Or would a
15 legitimate business person never think to have a second phone
16 for illegitimate business? And consider Tony Issa's obsession
17 with people wearing wires.

18 First, as you can see here from Mr. Blight's testimony
19 with Blight Tony Issa suggested that Blight could be a federal
20 agent and then Issa opened up his own shirt to prove that he
21 wasn't wired. In addition, you heard about wires a second
22 time. Shortly after Issa's arrest you heard that Tony Issa
23 went and confronted Ismael Velez in the freezer aisle of a
24 grocery store. Once there, Issa checked Velez for a wire
25 before Velez did the same to him. Ask yourself if you ever

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Summation - Mr. Wirshba

1 checked someone for a wire, if you've ever seen someone at a
2 restaurant check his legitimate business partner for a wire.
3 You haven't. And during this trial you have heard about it
4 twice.

5 And finally and relatedly, how do you know that Tony
6 Issa knew he was illegally bribing VMF managers? Because he
7 felt the need to coach the VMF managers that he was bribing on
8 what to say if they were approached. After his arrest, Tony
9 Issa tried to silence Velez, knowing how damaging it could be
10 if Velez' story got out. When Issa met Velez in the freezer
11 aisle, Tony Issa said that Velez should tell authorities that
12 Velez didn't receive any money from Tony Issa and that
13 everything was legit and Issa was just doing the work.

14 If, in Issa's mind, there was nothing wrong with the
15 bribes to Blight, Nicholson, and Velez, why would he keep
16 telling everyone to hide them? The answer is simple, ladies
17 and gentlemen. Issa knew he was giving illegal bribes. All of
18 the evidence points to the same thing. Issa knew that his
19 payments of meals, cash, gifts, and trips made in exchange for
20 work was wrong.

21 Now let's talk for a moment about Ismael Velez. First
22 of all, as you know with Velez, unlike the other two VMF
23 managers, there were no tapes but, frankly, there might well
24 have been because Issa's actions toward Velez, they follow the
25 Tony Issa playbook to a T. In fact, Velez was getting cash

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Summation - Mr. Wirshba

1 before, during, and after Issa's business with Blight and
2 Nicholson. Yes, Velez did conceal the truth from the
3 government. He broke his promise to disclose all of his crimes
4 and that is extremely serious but ask yourself when you are
5 considering Mr. Velez' testimony, what did he lie about? What
6 did he conceal? He told you that it was more bribes, bribes
7 from a different postal service vendor.

8 Ladies and gentlemen, it should be no surprise that
9 someone willing to take bribes once was willing to take bribes
10 again, just as Tony Issa was willing to give bribes on multiple
11 occasions from multiple people. And while Velez' concealment
12 is very serious and something you should carefully consider,
13 ask yourself if Velez was telling the truth when he got on the
14 stand. First of all, Velez admitted that he accepted a bribe
15 when asked by Mr. Brafman that he had never told the government
16 about. He also told the truth about what he received from the
17 government for his testimony and acknowledged that the benefits
18 he was supposed to receive, in exchange for his testimony,
19 could be at risk and, indeed, it could be. But ask yourself
20 while you are evaluating Mr. Velez' testimony, what incentive
21 did develops develop have to make up the bribes from Tony Issa?

22 Velez, he wasn't the reason that Tony Issa got
23 arrested. You will recall that Tony Issa was arrested on
24 September 2nd of 2018. It is in stipulation 4001. And shortly
25 thereafter, you will remember the testimony that Tony Issa paid

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Summation - Mr. Wirshba

1 a visit to Velez to warn him not to talk, we just talked about.
2 The government did not use Velez to get to Tony Issa. Instead,
3 the government approached Velez after Issa's arrest and asked
4 about Issa. Velez, at that point, he came clean. He knew he
5 had done something wrong and he turned himself into the
6 marshals and cooperated with the government. He then pled
7 guilty to accepting Tony Issa bribes and is now facing up to 15
8 years in prison.

9 Velez, he hadn't committed some other crime for which
10 he was trying to get time off his sentence. Velez didn't get
11 caught and then help catch some other guy to save his own skin.
12 Velez, from the start, told law enforcement that he had
13 accepted bribes from one person, Tony Issa. Why would he make
14 that up? Why would he say he accepted these bribes from Issa
15 if it wasn't true? Ask yourself, what is the benefit to Ismael
16 Velez? Nothing.

17 Now, in addition, there is plenty of testimony that
18 corroborates Ismael Velez. Maybe most importantly is the
19 testimony of Sohail Butt. You remember Sohail Butt. He is a
20 loyal employee of Mr. Issa. He still works for him. And you
21 will remember that Sohail Butt said that on one occasion, Tony
22 Issa, he got very mad with me and he told me, Sohail, I'm too
23 far away to get the money for him -- referring to Ismael Velez.
24 And if I don't pay this guy, he shuts all my shops. So, that's
25 what he mentioned at that time and he, meaning Tony Issa, was

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Summation - Mr. Wirshba

1 very angry.

2 Now, ladies and gentlemen, you don't need to like
3 Ismael Velez. You don't need to like that he concealed things
4 from the government or that he demanded more money from Tony
5 Issa. But look at how much of what he said was corroborated by
6 texts, by photos, and by the testimony of Sohail Butt. Think
7 about why Velez would make up his testimony and what could be
8 gained by telling law enforcement that he was bribed when he
9 wasn't.

10 Ultimately, Ismael Velez, he will have his day of
11 reckoning. He will be sentenced for the crimes that he has
12 committed and a Judge who sentences him will know not only
13 about those crimes but about everything else that he told you
14 during this trial. But the fact that Velez' story lines up so
15 closely with the Issa playbook used with Nicholson and Blight
16 combined with Sohail Butt's corroborating testimony shows that
17 Velez' testimony is credible, and in the end this testimony
18 plus the testimony of Nicholson and Blight and the physical
19 evidence including transcripts, the tablet, the taped
20 conversations, they constitute overwhelming evidence of guilt.

21 So, what about what you have heard from Mr. Brafman
22 during this trial? I will remind you, of course, that
23 Mr. Issa, he has absolutely no burden here. The government
24 bears the entire burden of proof and we embrace that burden.
25 But, when the defense presents evidence to you and makes

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Summation - Mr. Wirshba

1 argument to you, you are entitled to and you should scrutinize
2 that evidence and those arguments the same way you would any
3 other evidence and arguments. You should use your common sense
4 as well and when you do that, you will see that these
5 arguments, they either don't make sense or irrelevant. Let's
6 start with Nicholson and Blight.

7 Mr. Brafman spent a lot of time in his opening and in
8 questioning focusing on the motivations of Nicholson and
9 Blight. For Blight we spent a significant amount of time
10 reviewing whether or not his daughter went to Columbia, whether
11 his daughter had a scholarship, whether his mother had surgery
12 on a particular day that he mentioned to Tony Issa. For
13 Nicholson, it was all about who was the fish.

14 First of all, ladies and gentlemen, you heard what
15 Mr. Brafman told you in opening. He said that Nicholson would
16 be paranoid and mean-spirited. He said that Blight would be a
17 whining, patronizing liar. You saw these witnesses. You saw
18 their demeanor, you saw that they testified truthfully about
19 what happened and that their testimony is supported by the
20 recordings and other evidence in this case but there is a far
21 more important point here. The motivations of Nicholson and
22 Blight, they just don't matter. The reason that Nicholson and
23 Blight made those tapes, they're simply irrelevant here. What
24 is beyond dispute is what happened on those tapes, what Issa
25 said on those tapes. Mr. Brafman, he doesn't want you to focus

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Summation - Mr. Wirshba

1 on that unless, I expect, that in his closing argument you will
2 hear quite a lot about Nicholson and Blight and what they were
3 doing. Ladies and gentlemen, that is a distraction.

4 Nicholson and Blight, they aren't on trial. Tony Issa
5 is on trial and it is your job to determine what Tony Issa's
6 intent was, not the intent of Nicholson and Blight. In this
7 case, unlike many cases, we have tapes. From those tapes you
8 can see exactly what Tony Issa's reactions were to the
9 statements made by Nicholson and Blight. For example, when
10 Blight told Issa that he might need to come to Columbia
11 University, did it matter that his daughter didn't actually go
12 to Columbia? No. What mattered was that Tony Issa offered to
13 and did pay for that Blight. And, what mattered that once
14 Blight got here, Issa paid him, in cash, more than his trip was
15 worth.

16 What matters is why Tony Issa did these things, not
17 what motivated Blight. Blight's motivation, Nicholson's
18 motivation, these things are a distraction because if you
19 concentrate on what Tony Issa was doing and saying -- paying
20 for luxury goods and meals while asking for work -- you will
21 come to the conclusion that Tony Issa knew exactly what he was
22 doing -- bribing public officials in exchange for repair work.

23 Keep this in mind, too. Jim Nicholson, Jeff Blight,
24 they never asked for a thing from Tony Issa. To pay for
25 Blight's flight to come to New York City. That was Issa's

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Summation - Mr. Wirshba

1 idea, not Blight. Paying extra money to Blight above and
2 beyond what the trip cost, that was Issa's idea. Giving
3 Nicholson a tablet, paying for food for his wife; Issa's idea.
4 Taking Nicholson to high-end steak houses? Issa's idea. It
5 was all Issa's idea.

6 So let's talk for a minute about a related argument
7 that Mr. Brafman raised in his opening, in his questioning of
8 the witnesses that every single thing of value that Tony Issa
9 gave to these VMF managers, every meal, every gift, every trip,
10 every dollar of cash, was motivated completely by generosity or
11 friendship. And you will remember from that instruction that I
12 expect that you will hear later from Judge McMahon, that he
13 needs to prove that because if any portion of Tony Issa's
14 motivation was in order to get work from the U.S. Postal
15 service -- any portion -- he is guilty of bribery.

16 So, Mr. Brafman, he argued that these VMF managers are
17 sad, sad people and that Tony Issa was just trying to make
18 their lives better. Use your common sense, ladies and
19 gentlemen. Do these meals, these gifts, these trips, do they
20 feel like charity to you? Do they feel like friendship? Does
21 eating a \$30 stone crab while lecturing about the importance of
22 trust and keeping everything on the hush-hush, does that seem
23 like charity or friendship?

24 Does passing cash in a napkin under the table, does
25 that feel like charity or friendship to you?

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Summation - Mr. Wirshba

1 Does paying a prostitute at Tootsie's feel like an act
2 of charity?

3 No. Because it's not. Nicholson and Blight, they
4 weren't Tony Issa's friends. They barely knew him. There is
5 only one reason that Tony Issa was paying these VMF managers
6 who had the ability to send him loads of vehicle maintenance
7 work. That one reason: Literally, millions of dollars. You
8 heard that in the case of Ismael Velez. Tony Issa was trying
9 to get work, period.

10 How else do you know that these weren't acts of
11 kindness? Take a look at these portions of the transcript.
12 You heard over and over again that Tony Issa is a
13 self-proclaimed business man, a smart businessman. Do
14 businessmen give away meals, booze, and an iPad for nothing?
15 Of course not. Smart businessmen do business, they make deals,
16 they enter mutually beneficial arrangements where each side
17 gets something in exchange for something else, a two-way
18 street. That's what Tony Issa said and that's exactly what
19 Tony Issa was doing. He told you that over and over. These
20 meals, these gifts, these trips, this cash? It's business.
21 Illegal business. A *quid pro quo*.

22 Keep this in mind, too. You don't have to find that
23 every payment that Issa made was purely motivated by an intent
24 to bribe. First, you need to find that only one of these
25 things of value that Issa gave was intended, in part, as a

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Summation - Mr. Wirshba

1 bribe to find him guilty. So, even if you buy Mr. Brafman's
2 argument that here and there Mr. Issa, he was giving away
3 things because he felt sorry for the VMF managers, that just
4 isn't enough. You need to believe that all of the things that
5 Mr. Issa provided -- all of them -- the cash, the trips, the
6 bottles, the meals -- all of it was out of the goodness of his
7 heart.

8 (Continued on next page)

ICHHIss3

Summation - Mr. Wirshba

1 MR. WIRSHBA: (Continued) This is simply not
2 believable.

3 Another argument that Mr. Brafman might make is that
4 Tony Issa didn't know that what he was doing was illegal.
5 Yeah, sure, he bribed people. Yes, he paid for meals and booze
6 and trips in exchange for work, but he thought he was only
7 violating postal rules, not the law.

8 Well, ladies and gentlemen, if you hear that argument,
9 you can dismiss it for two reasons: First, it's just not true.
10 You know it's not true from the tapes. What was Tony Issa
11 constantly talking about? What did Tony Issa make sure to say
12 over and over and over again? No quid pro quo, no this for
13 that, again and again. Well, ladies and gentlemen, take a look
14 at the contracts that Delores Waters asked you about -- that
15 Delores Waters talked about at the very beginning of this
16 trial, excuse me. Take a look at the language of those
17 contracts that talk about gifts. When you do that, you'll find
18 that quid pro quo is nowhere in these contracts. That term,
19 that concept, it just isn't discussed. So why is Tony Issa
20 obsessed with whether or not there was a quid pro quo? Because
21 he knows when he gives things to VMF managers, the risk is to
22 him is not just a canceled contract, the risk is criminal
23 charges, because you know, as we discussed, you'll hear from
24 Judge McMahon, it's the bribery law that talks about a quid pro
25 quo. So every time that Tony Issa mentions a quid pro quo,

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Summation - Mr. Wirshba

1 he's telling you he knows exactly what he's risking. It's not
2 just a risk to his reputation or his companies; he's signaling
3 to you that he knows the law. And when he insists upon a
4 two-way street, he's telling you that he intends to break that
5 law. For Mr. Brafman to suggest otherwise would ignore every
6 time Mr. Issa discusses the quid pro quo.

7 In addition, as we already discussed, you know that
8 Tony Issa knows that a quid pro quo is illegal because he says
9 so on the tapes. Here in Government Exhibit 303D, Tony Issa
10 defines a quid pro quo and tells Nicholson that if Nicholson
11 demanded something for giving Tony Issa work, that would be
12 illegal. But then he agrees when Nicholson says if something
13 just came his way, that would be OK, because then, you know,
14 there's no quid pro quo. It just came his way.

15 In addition to defining quid pro quo, Mr. Issa also is
16 constantly talking about how he would never bribe a VMF manager
17 to do anything illegal. Why is Issa talking about illegality
18 if all he's concerned about is a canceled contract for his
19 company? He's talking about illegality because he knows that
20 paying VMF managers to get work, it doesn't just run afoul of
21 some internal postal regulation. It might do that, that's
22 true, but there's more. It's a crime. And even though you
23 know that it's not true that Tony Issa was worried about only
24 his contract, it.

25 Also wouldn't matter, because even if you found ladies

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Summation - Mr. Wirshba

1 and gentlemen, that Tony Issa thought his quid pro quos were
2 just violations of postal rules and you shouldn't, you know
3 much more than that, he's still guilty. Why? Because in order
4 to convict, as we've already discussed, I expect that Judge
5 McMahon will tell you that Tony Issa didn't need to know
6 exactly which specific law he was violating. Instead, I
7 anticipate that Judge McMahon will instruct you that Tony Issa
8 only needed to act corruptly.

9 Listen extremely carefully when Judge McMahon
10 instructs you on what it means to act corruptly. But I expect
11 that she will tell you that to act corruptly means having an
12 improper motive or purpose, conscious wrongdoing. Having a bad
13 or evil state of mind. Someone who makes a deal for an illegal
14 quid pro quo with a public official, therefore, doesn't need to
15 know exactly what law he's violating so long as he acts within
16 an improper motive.

17 Do you have any doubt in your mind that Tony Issa
18 acted with an improper motive? With all the hiding, all the
19 talk of loyalty, all the scheming, all the reassurance that
20 everyone was doing it, Tony Issa knew that what he was doing
21 was wrong. From the evidence there can be no doubt about it.

22 Now, Mr. Brafman might also argue that Issa's payments
23 and gifts to the VMF managers weren't bribes because Issa's
24 companies were doing good work, because Issa's companies were
25 the only ones open overnight, or because Issa's companies were

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Summation - Mr. Wirshba

1 the only ones under contract. This too, ladies and gentlemen,
2 you know from the testimony and evidence is simply not true.
3 You heard each of the VMF managers say that it's in their
4 discretion or up to their subordinates whether to give work to
5 a third-party contractor, and it's up to them to decide which
6 contractor gets to do that work. Delores Waters, she told you
7 the same thing at the beginning of the trial. It's up to the
8 VMF manager and his staff. Even if there was only one
9 contract, you heard Delores Waters say that nothing about the
10 existence of that contract, nothing about the existence of a
11 VMRA entitled the third-party contractor to work. How else do
12 you know this is true? Because Tony Issa was constantly
13 begging for work. In the tapes he was constantly begging
14 Nicholson to give him PMIs. And Velez, he told you Issa was
15 constantly asking for more repair work. If Tony Issa was
16 entitled to work and it was going to come to him anyway, why
17 was he always begging for it? Because Tony Issa wasn't getting
18 what he wanted, and so he bribed the people who could get it
19 for him.

20 But at bottom, ladies and gentlemen, it's just another
21 distraction because even if these VMF managers were going to
22 give Tony Issa the work, it wouldn't matter. I expect that
23 Judge McMahon will instruct you that the government does not
24 have to prove that the public official ever intended to perform
25 the act sought.

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Summation - Mr. Wirshba

1 I anticipate that she will also say that a quid pro
2 quo is illegal even if the public official would have taken the
3 same official act without the bribe or even if the public
4 official did not take the official act sought in the end. In
5 other words, even if the quo was never going to happen or
6 already was definitely going to happen, the payment of a quid
7 can still be a bribe.

8 Finally, I expect that Judge McMahon will instruct you
9 that an illegal quid pro quo would be illegal even if the
10 action taken by the public official was desirable or beneficial
11 to the public. A bribe payment is unlawful even if the public
12 official would have and should have taken that action anyway in
13 the public interest.

14 What does this mean here, ladies and gentlemen? It
15 means that even if Tony Issa struck a bargain to pay the VMF
16 managers for work that they already planned to give him, it
17 would still be illegal and he would still be guilty. So this,
18 ladies and gentlemen, it's just a distraction. It's not a
19 defense to the charge, period.

20 Finally, as you heard in Mr. Brafman's opening and
21 throughout his questioning, Mr. Brafman might try to distract
22 you with issues that have just absolutely nothing to do with
23 this trial. You know what's at issue during this trial? It's
24 whether or not the U.S -- it's whether or not Mr. Issa paid
25 bribes to U.S. postal officials.

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Summation - Mr. Wirshba

1 You know what's not at issue in this trial, whether or
2 not the United States Postal Service needed new trucks. This
3 fact has no bearing on whether or not Tony Issa gave bribes,
4 stole money, or cheated on his taxes. What else isn't
5 relevant? Whether or not Issa's garages were packed with
6 postal trucks. He's charged with bribing people to ensure he
7 gets work. It should be no surprise to anyone that he had post
8 office trucks in his garages. Finally, whether or not the area
9 where Tony Issa's Detroit operation worked needed jobs or was
10 blighted, those issues have just nothing to do with this case.

11 Let's make one thing crystal clear a, ladies and
12 gentlemen. The U.S. Postal Service is not on trial in this
13 courtroom. Tony Issa is on trial. The only thing that matters
14 is Tony Issa and his bribes, his lies, his theft, and his tax
15 fraud.

16 What is relevant to this bribery count, then? It's
17 pretty simple, ladies and gentlemen, and the bottom line is
18 this: When Tony Issa was giving all these things to VMF
19 managers, the cash under the table, the expensive lunches, the
20 trips to Miami, and the envelopes of cash week after week, you
21 know why he was doing it. You know it from all the evidence.
22 It was a bribe. He wanted and expected work in return for
23 providing these things, and ladies and gentlemen, that makes
24 him guilty of Count One.

25 The next count, Count Two, it charges Tony Issa with

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Summation - Mr. Wirshba

1 the theft of government funds. What theft? The continuous and
2 repeated double billing, billing for work not performed, and
3 billing for work not requested that you heard over and over and
4 over again from all three VMF managers. You heard from each
5 VMF manager that they had problems. You heard from these VMF
6 managers that they raised these issues with Tony Issa. Jim
7 Nicholson, you heard him confront Tony Issa in the Olive Garden
8 about shoddy work. Jeff Blight, he told you that while the
9 first couple of repairs were good, things after that, they got
10 pretty bad. There was double billing, billing too much, and
11 even double billing on the same bill.

12 So let's take a look at some of these things. Time
13 and time again, despite Issa having been informed of the issues
14 with the work and with the way that his companies were
15 invoicing, the problems continued. Let's take very briefly to
16 talk about a few of these problems that you saw over and over
17 again.

18 The biggest one, it's the double billing. Issa's
19 companies billed for PMI work, the preventive maintenance
20 inspection that you heard so much about, and then you know from
21 the testimony that they billed again. They billed again for
22 itemized items that should have been covered by the PMI. Now,
23 it would be one thing if this just happened once. It would be
24 one thing if here and there the duplicate charges, they were
25 random, but you, ladies and gentlemen, know that that's not

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Summation - Mr. Wirshba

1 what the evidence showed. Instead, what the evidence showed
2 was that the same charges kept being billed over and over
3 again, and not just one but many of Issa's locations.

4 Take a look. The road test charge right here, it was
5 clearly double billed, and not just at one company. Look
6 again. There's other companies. This one's First Star, but
7 let's go to the next slide. There's also double billing
8 another from First Star and, on the next slide, from Hybrid.

9 You also heard from Nicholson about duplicate charges
10 related to batteries. Let's look at that. Here's one from
11 Delorean. Let's look at the next slide. First Star and
12 Delorean. And on the next, Safeway in Detroit. Yet another
13 set of double billing. The common denominator between all of
14 this, between the Safeway in Michigan, Healey in Westchester,
15 and First Star and Hybrid, the common denominator is Tony Issa.

16 The other thing that Issa's companies did that you
17 heard from both Nicholson and Velez is that they would bill for
18 work the USPS had not authorized. Mr. Brafman may try to
19 portray this as trivial, but when you stop for a minute, you'll
20 realize it's anything but. It's like going to a mechanic, and
21 when they found something new, instead of calling you to say:
22 Hey, there's a problem. Do you want us to fix it? they just
23 bill you for it. That's not fair, and it's exactly what Issa's
24 companies did. They just went ahead and did extra work without
25 even asking. And here, Issa's companies, they knew better.

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Summation - Mr. Wirshba

1 Tony Issa, he knew better. Why? Because unlike when you visit
2 your mechanic, Issa had a contract, and that contract required
3 him to seek the postal service's permission before taking any
4 additional work. You heard that this happened often.

5 All right. Taken together, it was Issa's companies
6 over and over again that did this double billing. Year after
7 year Velez told Issa about these issues, and yet Tony Issa did
8 nothing. He is the common denominator among all this billing.
9 Tony Issa is guilty of Count Two.

10 But Tony Issa, he wasn't just stealing money from the
11 postal service. He was determined to cheat the system in any
12 way he could. After all, he had already bribed, he had lied,
13 he had stolen to get extra money into his pocket. Why give it
14 back to the government in taxes? The tax laws, they were just
15 another system to cheat.

16 So what did Tony Issa do? He lied, cheated, and stole
17 again. He paid for personal expenses from his businesses and
18 then he hid the true nature of those expenses from the IRS. He
19 took cash and he hid it from the government. When he finally
20 got caught, when the IRS noticed that the numbers it was
21 getting, they just couldn't be right, what did Tony Issa do?
22 He lied again. This time to accountants, so many accountants,
23 so that he didn't have to pay one more dime in taxes. He
24 covered up his earlier lies with new lies, confident that the
25 law would never catch up to him. Well, ladies and gentlemen,

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Summation - Mr. Wirshba

1 now it has, and now you can hold him accountable.

2 But before I go into the detail of the third set of
3 charges, the tax charges, I'll just say a brief bit about taxes
4 in general. Ladies and gentlemen, no one likes to pay their
5 taxes, but everyone understands that it is necessary for the
6 functioning of our government. In addition, in this country
7 the IRS relies on individuals and business owners to
8 self-report their earnings and expenses voluntarily to pay the
9 taxes owed. Without this voluntary reporting, the system would
10 not work. So Congress has made it a crime to purposely lie on
11 your tax forms or purposefully evade taxes. The tax laws are
12 there for a reason, to make sure that every single person does
13 their part and does not purposefully fail to account to the IRS
14 for their fair share.

15 So how did Tony Issa cheat the tax system? In the
16 broadest sense he cheated in two ways: First, he lied to the
17 IRS about his personal income on his personal income tax
18 returns in 2012, 2013, and 2014; and, second, he lied to the
19 IRS about how much money First Star Auto Repair and other
20 companies that he controlled made in 2012. Let's look at these
21 one at a time. Let's start with Tony Issa's personal taxes.

22 The personal income tax crimes are charged in Count
23 Five through Eight, and I expect that Judge McMahon will
24 instruct you that on those counts that they allege that Tony
25 Issa signed his personal tax returns knowing that at least one

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Summation - Mr. Wirshba

1 item on the return was materially false or, in other words, was
2 essential to an accurate determination of the defendant's tax
3 liability.

4 Now, on these counts, as with all the others, the
5 government has met its burden. Here it met its burden by
6 showing that Tony Issa underreported his income. What were the
7 sources of that money that the government proved Tony Issa
8 failed to report on his personal income tax returns? There
9 were two sources: personal expenses paid from Issa's businesses
10 and cash pulled from his cash stations. Let's start with
11 personal expenses.

12 You heard that in 2012, 2013, and 2014, Tony Issa paid
13 a lot of personal expenses out of his businesses. Some things,
14 normal living expenses, he paid for those throughout this
15 period, like his rent, his utilities, his cable, and his
16 parking. But other things, they were one-time purchases, like
17 for his dentist, his boat, his Mercedes, a commercial kitchen,
18 and his vacation home in the Hamptons for the summer. But in
19 each case you have no doubt, these expenses were personal to
20 Tony Issa. You know that for two reasons: First, you can use
21 your common sense. Going to the dentist is not a business
22 expense for a vehicle repair shop; and, second, excuse me --
23 and second, excuse me for one moment.

24 Now, going to the dentist, as I said, it's not a
25 personal expense for a repair shop. And according to

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Summation - Mr. Wirshba

1 Mr. Brafman in the opening, the government doesn't need to
2 prove that the boat or the apartment, that these were personal
3 expenses. In fact, Mr. Brafman said that he wasn't going to
4 argue that the apartment was a completely OK deduction. So
5 those are the two ways that you know that these aren't personal
6 expenses. You're going to use your common sense, and you're
7 going listen to the arguments of the parties. When Mr. Brafman
8 says that he knows that it wasn't a completely OK deduction,
9 you should pay attention.

10 Nevertheless, the government did prove that these were
11 personal expenses. You heard from Agent Berzansky about how he
12 carefully examined the records of these companies and carefully
13 tallied the expenses, and that in his judgment that they were
14 personal because they were not ordinary and necessary to Issa's
15 business. On this exhibit you can see all of the personal
16 expenses that are tallied on the left-hand side. And in 2012,
17 it amounts to Tony Issa paying for over \$90,000 in personal
18 expenses directly from First Star, Optimum, and Hybrid; in
19 2013, more than \$250,000; and in 2014, more than \$30,000 in
20 personal expenses directly from the bank accounts.

21 But that's not the only way that Tony Issa got money
22 that he didn't report on his personal income tax returns. You
23 know he also took cash from his businesses. You heard a lot
24 about it, and you saw the records. You remember that these gas
25 stations, they're owned by the defendant, and you remember that

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Summation - Mr. Wirshba

1 they kept very detailed records of the cash going in and out.
2 You heard that from Sohail Butt, about how he manages several
3 gas stations and that they would keep track of the daily sales
4 report. Similarly, you heard that from Claudia Betancourt who
5 told you that these reports would come to the main office and
6 that she would make sure that they were accurate.

7 What did Claudia and Sohail tell you was recorded on
8 these records? Payouts. We've had a lot of discussions about
9 payouts or payments that went straight from the cash register
10 to pay for someone or something. This included things for the
11 business, sure, but it also included payments that had nothing
12 to do with the businesses and had everything to do with Tony
13 Issa personally, cash to Tony, cash to Tony's father, cash to
14 Tony's sister, and cash to Tony Issa's daughter. And you heard
15 from Ms. Betancourt that each time she saw a payout that
16 referenced something connected to Mr. Issa, Ms. Betancourt
17 would call Issa and ask him about it, confirm that the payment
18 was good with him.

19 Now, Tony Issa, he only got some of this money
20 himself. Much of it went to his father, his daughter, his
21 sister, as we just discussed. But you know that despite his
22 best efforts, Tony Issa paying friends and family, it doesn't
23 change that these payouts, they ultimately are income to Issa.
24 You heard Agent Berzansky tell you about the concept of
25 constructive receipt. When a corporation pays an unrelated

ICHHIss3

Summation - Mr. Wirshba

1 third party at the direction of that corporation's owner, the
2 IRS, it treats that corporation's owner as first getting that
3 income and then passing that income on to the third party. In
4 other words, an owner of a corporation can't avoid paying
5 income taxes just because he has his company pay his bills and
6 give gifts directly, but that's exactly what Tony Issa tried to
7 do. And you heard that Agent Berzansky, he found that there
8 was quite a bit of money coming out to Tony and Tony's family
9 and friends, and you can see it on those lines that say "cash
10 sheets Tony" and "cash sheets Tony family/friends."

11 Ladies and gentlemen, you know that this number, these
12 numbers from these cash sheets, that the number that's actually
13 missing that was taken by Tony Issa, it was actually much
14 higher in 2012. Not by virtue just of the fact that Agent
15 Berzansky, he only had August through December, you also know
16 that the amount that Tony took was much higher because you saw
17 Daniela Silva's words to that effect.

18 Here's Government Exhibit 710. Here, Daniela wrote to
19 Tony on October 11, 2012: "You keep taking moneys from First
20 Star and Optimum that are not accounted for. If they are not
21 all personal, you should let the office know what they're for,
22 otherwise I will go for personal. See below how much you took
23 in these last three months." Then she includes a table.

24 We just discussed this with Agent Berzansky, ladies
25 and gentlemen. Look at these totals. These are quite high.

ICHHIss3

Summation - Mr. Wirshba

1 Despite that, however, despite the fact that Agent Berzansky
2 had access to this information, he didn't include this on his
3 tax calculation because this wasn't reflected in a proper
4 business record. So you know that despite Agent Berzansky's
5 calculations, that number, that cash that Mr. Issa kept, it was
6 actually much higher. Look at the last thing that Daniela
7 Silva says here. She says: Below are your total expenses paid
8 for each month. Very high numbers. June, \$40,000;
9 July \$41,000; August, \$35,000; and September \$25,000.

10 Now, I expect that Mr. Brafman, he may argue that Tony
11 Issa, he didn't realize that he was responsible for paying
12 taxes on these personal expenses. Keeping in mind that the
13 government, it always bears the burden, never the defendant, if
14 Mr. Brafman argues that Tony Issa didn't know what he was
15 doing, you can dismiss this argument. You know from the
16 testimony and evidence presented that Tony Issa knew exactly
17 what he was doing when he neglected to declare these personal
18 expenses and cash on his personal income tax returns.

19 How do you know? Because you're going to use your
20 common sense. When a business owner takes money from his own
21 register, is it stealing? No. But is it income? Of course it
22 is. You remember that in 2013 Tony Issa declared on his bank
23 return -- excuse me, on his tax return, only W-2 income, only
24 income that came directly into account, his account, from his
25 companies, not a dime more. But you knew and Tony Issa knew

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Summation - Mr. Wirshba

1 that Issa got so much more than that. He took money from the
2 registers, he gave money from the cash registers to his family,
3 and he paid for things like his car and his Hamptons summer
4 home with those company funds. Every taxpayer knows that when
5 you get money from where you work, when your work pays for your
6 Mercedes and your vacation home in Southampton, that is income,
7 plain and simple.

8 But you don't even just need to use your common sense
9 to know that Issa was avoiding taxes. You know that he was
10 avoiding taxes because Tony Issa tried to conceal these
11 expenses; he tried to conceal this cash. And you know that
12 when someone tries to conceal something, they're trying to hide
13 because they know that what they're doing is wrong.

14 So how did Tony Issa try to conceal these things?
15 Well, he tried to do so in his corporate books. Let's start
16 with the expenses.

17 You remember that Claudia Betancourt told you that it
18 was her job to create the monthly expense reports, just like
19 this one for First Star Auto Repair. To do that, she took
20 every expense that she found in the bank accounts and she found
21 a place for it in this form. In 2012, those categories in
22 green, those reflected the legitimate business expenses, but
23 when Ms. Betancourt couldn't find a place for these other
24 expenses that she found, she put it on the bottom.

25 So what did she put here on the bottom? Tony's rent,

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Summation - Mr. Wirshba

1 Tony's parking, Tony's dentist, Tony's boat. These were things
2 that weren't expenses, and Claudia Betancourt, she didn't
3 classify them as such. But to Tony Issa and Daniela Silva, his
4 top employee and his wife, that just wouldn't do. Sitting at
5 the bottom like that, those expenses, they were exposed.
6 Someone might find out what they were. So Silva created new
7 categories and moved the expenses in so they could no longer be
8 identified.

9 Let's look at those. This is 715 and 716A. You
10 remember when Claudia compared the spreadsheet on the left with
11 the spreadsheet on the right, the one on the left is earlier,
12 it's from January, and the one on the right, it's from
13 February. And you remember she told you that Tony's rent, it
14 becomes city office rent; Tony's parking, city office parking;
15 Tony's boat, entertainment; and Tony's dental, health
16 insurance. Health insurance, ladies and gentlemen, that's a
17 clear attempt to hide.

18 Remember, this isn't the only way you know what
19 happened. Daniela Silva, she sent out an email, Government
20 Exhibit 726, in which she made this into corporate policy for
21 First Star Auto Repair. What does she say? Instead of Solow
22 rent, which is Mr. Issa's apartment, write "city office rent."
23 You can see it here. It's laid out. There you have it.
24 Here's how we're going to hide and here's how we're going to do
25 it. For a while this seemed to work. By hiding it in the

ICHHIss3

Summation - Mr. Wirshba

1 books and records of First Star Auto Repair, Tony Issa managed
2 to hide these personal expenses from anyone outside of First
3 Star. It would be impossible for anyone just looking at these
4 books and records once they were finished to tell what these
5 things were other than that they were legitimate expenses of
6 the business, and that's exactly the point. These personal
7 expenses are hidden, and the accountants, they wouldn't ask
8 questions.

9 What's more, this scheme offered an even greater
10 benefit. Not only did hiding the personal expenses as
11 corporate ones allow Tony Issa to skirt paying personal income
12 taxes, but in 2012 it also meant that he had more corporate
13 expenses to claim for First Star, further reducing First Star's
14 tax burden. This was a win-win for Tony Issa, a double cheat
15 of the system.

16 What about the cash? How do you know that Tony Issa
17 sought to hide the cash? Easy. He kept it out of the bank.
18 You know that Tony Issa took or gave to his family and friends
19 some \$26,000 in cash from First Star in 2012, and that's just
20 from August to December. You heard from Claudia and Sohail
21 that the money that gets paid out, it never reaches the bank.
22 As long as that cash never reaches the bank, to anyone looking
23 at the bank accounts, looks like First Star never made that
24 money.

25 But in early 2013, the story changes. All of a sudden

ICHHIss3

Summation - Mr. Wirshba

1 Tony Issa finds that maybe he wasn't as good as cheating the
2 tax system as he thought. In March of 2013, Issa received a
3 notice from the IRS. First Star, it says, IRS records show
4 your company got a whole lot more revenue than you reported, so
5 much more revenue that the IRS calculates that you owe us a
6 check of over \$400,000.

7 How did the IRS detect this revenue? Well, as you
8 heard, the IRS receives 1099s, and when those 1099s show that
9 there's money from a third party that was paid to a business,
10 they can calculate that and determine whether that business
11 owes extra taxes. Here, there was a 1099 from the U.S. Postal
12 Service that far exceeded what First Star Auto had declared as
13 income in 2012. Issa's company, it hadn't told the IRS about
14 approximately \$900,000 in funds that it received from the
15 postal service and other companies in the 2012 year.

16 So faced with this reality, what does Tony Issa do?
17 Does Tony Issa say: You got me. I'll pay up? Does he accept
18 that there are penalties and interest for his corporate tax
19 shenanigans but no additional consequences? No. Of course he
20 doesn't, because he's a cheater, and when you're a cheater, you
21 cheat no matter what the cost.

22 So Issa and Silva, they had to scheme to ensure that
23 they don't pay any more taxes. So long as they keep the 2012
24 internal First Star records private, they think that they can
25 convince some accountant to lie to the IRS on their behalf. So

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Summation - Mr. Wirshba

1 what's their first stop? What's the first thing Issa and Silva
2 do? Well, on March 25 of 2014, shortly after receiving a
3 notice from the IRS, they go to George Mousouris, who had been
4 working for Ms. Silva for years. In fact, Mousouris had
5 recently prepared the Hybrid 2012 tax return. You remember
6 Hybrid. It's the company that got \$357,000 from First Star in
7 2012, but how much did it declare on its income tax returns?
8 About \$30,000 in income for the calendar year 2012.

9 So Silva, she emails Mousouris in Government 501 about
10 the notice: "Hi George, I have a question about Hybrid
11 Specialist. This corporation was opened in 2011 but started
12 doing business in November 2013. You filed the corporate taxes
13 for 2011 and 2012 but with no activity. We are being audited
14 for 2012 corporate taxes for First Star. How should we apply
15 that money to Hybrid?"

16 And you remember what Mousouris said. Mousouris told
17 you that they spoke on the phone and he spoke with Ms. Silva.
18 He told them: You didn't declare that money for Hybrid in
19 2012, so you have two options: You could, on the one hand,
20 make those transfers from First Star to Hybrid a loan from
21 First Star or, on the other hand, you could say that those
22 transfers from First Star were an investment into Hybrid from
23 First Star. In both circumstances, Mousouris explains, Hybrid
24 would need to declare any additional income from First Star.
25 The Hybrid return he filed, that Mousouris filed, it would be

ICHHIss3

Summation - Mr. Wirshba

1 just fine. But in both situations, First Star, it couldn't
2 claim the loan or investment as an expense. The money would
3 need to be declared as income of First Star and Issa would have
4 to pay taxes on it.

5 Did that satisfy Tony Issa? Most certainly not. You
6 know that from Tony Issa's own words. You remember that the
7 day after Daniela Silva emailed Mousouris, Silva emailed Tony
8 to report back. Government Exhibit 752: "I spoke to George
9 the accountant about First Star transfers and checks put into
10 Hybrid in 2012. He says it's better to say that this money was
11 a loan, not to say that it was paid for services, because we
12 did not show that money into Hybrid for the 2012 corporation,
13 and they can come after Hybrid later. The total amount is
14 close to \$400,000. Let me know what to do."

15 Issa responds two hours later: "Ask him what if we're
16 showing it as a loan? It might be taxable to First Star as
17 income. What about putting it as an investment into Hybrid,
18 that way it's not taxable to First Star?"

19 Eight minutes later, Silva responds: "I already asked
20 that question to George. We cannot put it as investment to
21 Hybrid anymore because 2011-2012 taxes returned didn't show any
22 of this money. At the time I wanted to show it, but you," Tony
23 Issa, "you said no."

24 This conversation continued. Two minutes later Issa
25 asked again: "Ask him if the loan is going to be taxable on

ICHHIss3

Summation - Mr. Wirshba

1 First Star. If it is, it's no good, then we need a different
2 solution."

3 And after some back and forth, dissatisfied with the
4 answer that he was getting, Tony Issa, he found himself to be
5 upset. He's used to cheating the tax system, and yet all of a
6 sudden, it looks like the system is catching up with him. He
7 may actually have to pay taxes for First Star Auto Repair that
8 he owes to the IRS, and this frustration, it's apparent in his
9 response: "There are 1,000 ways to earn the money and then put
10 it out without it being taxable to the corporation. What is
11 the use of your stupid accountant to make a loan and then have
12 to pay hundreds of thousands in tax? Tell him to call me
13 ASAP."

14 Ladies and gentlemen, this email, Government
15 Exhibit 725, it's extremely important evidence that you should
16 study closely when you go back into the jury room to
17 deliberate. This email shows you a lot about Issa's true
18 intentions. First, it shows that Issa is not only in charge of
19 the companies, he's also in charge of the tax decisions. Issa
20 may not write often, but when he does, you know who calls the
21 shots. Silva asked him what he wants to do, and Issa, he gives
22 the orders.

23 Second, this email shows Issa's knowledge of the tax
24 laws. What about making an investment? he asks. What about a
25 loan? Issa says there are a million ways to put out this money

ICHHIss3

Summation - Mr. Wirshba

1 without it being taxable. Those aren't the words of a man
2 who's ignorant of how the movement of money affects tax
3 returns. Those are the words of a tax cheat who's willing to
4 do anything to avoid paying the taxes that he rightfully owes
5 to the IRS.

6 So what happened from there? Well, you know what
7 happened. They didn't like the answers they were getting from
8 George Mousouris, and so what did they do? They went on to the
9 next accountant. They went on to Chris Tsamutalis and they
10 brought Chris Tsamutalis their problem. They said:
11 Tsamutalis, look at this deficiency notice. It says we owe
12 \$400,000, but really, we don't owe any money. Yes, we
13 understand First Star's income in 2012 had more income than we
14 reported, but it's only because we also underreported our
15 expenses. In fact, they told Tsamutalis First Star
16 underreported its expenses and income almost precisely the same
17 amount, how convenient, so that the expenses that they had
18 suddenly found years after they filed the return, they just so
19 happened to match the increased income leading First Star to
20 owe practically no taxes.

21 This is no coincidence, ladies and gentlemen. So
22 let's look at what they gave Chris Tsamutalis and let's look at
23 how they tried to convince him that this was the truth.

24 Ladies and gentlemen, there are two line items that
25 we've gone over in depth. You've heard about it from

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Summation - Mr. Wirshba

1 Mr. Tsamutalis; you heard about it from Agent Berzansky. It's
2 the cost of goods sold, and we're going to take them very
3 briefly one at a time. Let's look at the -- there's two cost
4 of goods sold that make up the bulk of this expense, and I will
5 tell you, ladies and gentlemen, both of these numbers, both of
6 these figures, the explanations, we have proven beyond a
7 reasonable doubt that they are lies.

8 Let's start with subcontracting. Ladies and
9 gentlemen, this is the accounting that Daniela Silva and Tony
10 Issa gave to Chris Tsamutalis to explain the subcontracting.
11 These moneys moving out, this was supposedly the subcontracting
12 work. But you know that subcontracting, that explanation, it
13 was a lie. You know that because Ms. Silva, she sent an email
14 to that effect. It's Government Exhibit 801. And in
15 Government Exhibit 801, Ms. Silva said that this money, it
16 wasn't subcontracting. One of these businesses wasn't even in
17 business yet, and the others, they were just short.

18 So why would they tell Tsamutalis that this was
19 subcontracting? Easy. Because when something is
20 subcontracting, that means that it's deductible. If these
21 other companies, if they actually did work on behalf of First
22 Star, well, then First Star, they could claim that these things
23 were deductions. And you know that that's what Tony wanted to
24 do because you already saw that email. He was concerned. The
25 money will be taxable in First Star anyway. First Star

ICHHIss3

Summation - Mr. Wirshba

1 received it, not Hybrid. That's what Daniela Silva told him,
2 and this was his reaction.

3 Now, Chris Tsamutalis, he buys it, he buys that these
4 things are subcontracting. But Tsamutalis, he's also diligent.
5 He also realizes that if these things are subcontracting, that
6 means that these other companies, they need to also pick up
7 that income. They need to declare as income the gross receipts
8 from these subcontracting costs.

9 So what does Tsamutalis do? He talks to Issa and
10 Silva. He told you about that conversation. He told you that
11 he told them that these other companies, they needed to also
12 adjust their income tax returns, and that was backed up by the
13 emails: "Hi Daniela. Yes, we have to file amended returns for
14 the other companies."

15 So what did Tsamutalis do? He did his job. He
16 prepared an amended return for another company. In particular,
17 he prepared the amended return for Hybrid. You can see that.
18 It's Government Exhibit 809. And you remember that Tsamutalis,
19 he took this prepared amended return, and he sent it to Tony
20 Issa, due date as soon as possible, along with a payment,
21 \$141,000. But you heard that this, it was never filed with the
22 IRS.

23 What did Issa and Silva do instead? Instead, they did
24 what they always did when they didn't get an answer that they
25 liked from one accountant; they went to another. So this time

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Summation - Mr. Wirshba

1 they went to George Mousouris, and George Mousouris, he
2 prepared the tax returns without asking any additional
3 questions. Take a moment to take stock of that, ladies and
4 gentlemen. Issa was told by an accountant: Hey, you need to
5 do this. You need to pick up this additional income. In fact,
6 the accountant went so far as to prepare an amended return.
7 And what did Tony Issa do? He ignored it. That tells you
8 everything about Tony Issa's intent to evade taxes.

9 Let's talk about the other expense in addition to
10 subcontracting costs. The other expense was gas for our
11 trucks. Ladies and gentlemen, I'm running out of time, so I'm
12 moving quickly here. But you remember this expense, gas used
13 to put -- cash used to put gas in our trucks. That's what
14 First Star said, that's what Issa and Daniela Silva told
15 Tsamutalis, but you remember the testimony. There were no
16 trucks. No one could find any trucks in 2012. They weren't
17 anywhere. They weren't in the books and records of First Star.
18 They weren't on the tax returns. They just were nowhere to be
19 found.

20 So this too was a lie. This too was a lie that there
21 was trucks that they put gas in. But Agent Berzansky, he
22 didn't completely view it that way. He knew this was a lie,
23 and he said that he couldn't find anything to substantiate that
24 the cash was used to put gas in the trucks. But nonetheless,
25 when Agent Berzansky, when he did his calculation of the tax

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Summation - Mr. Wirshba

1 loss, of the taxes due and owing from First Star in 2012, he
2 found that this was an expense. He allowed it to be an
3 expense. He allowed it to be an expense because he heard
4 testimony about cash payroll.

5 Maybe, ladies and gentlemen, maybe that's why Issa and
6 Silva, maybe that's why they tried to cover it up with this
7 excuse of gas cash used to put gas in their trucks. Maybe.
8 But that would only be part of an explanation because you know
9 that it wasn't just cash payroll that Issa and Silva were using
10 this cash for that went missing. It wasn't just to pay their
11 employees. It was also to pay Tony and Tony's friends and
12 Tony's family. That money too came straight out of the cash
13 register. While Agent Berzansky when he presented to you his
14 tax due and owing, he didn't include that, those figures, you
15 know from the evidence presented that those figures, they were
16 also money taken and that there was no reasonable expense for
17 that amount.

18 Now, this is the final tax calculation that Agent
19 Berzansky showed you, and he told you that in this last column,
20 this represents his analysis of the amount due and owing,
21 including that entire expense, that entire expense for all of
22 the cash that was missing as an expense to First Star Auto
23 Repair. Ladies and gentlemen, even when he did that, you can
24 see what happened. Even when he did that, First Star still
25 owed \$171,000. But you know, ladies and gentlemen, that the

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Summation - Mr. Wirshba

1 figure is actually higher because you've seen all the evidence
2 and you can consider not just what Agent Berzansky did, but you
3 can consider things like Silva's emails and all of the money
4 coming out of the register.

5 So, ladies and gentlemen, before I leave you, I want
6 to just take one moment to remind you of where we began. We
7 started with Tony Issa's words. We started with Tony Issa's
8 motto: If you don't know how to hide, don't steal. Well, Tony
9 Issa, he thought he could hide, he thought he could steal, and
10 he thought he could bribe without consequence. But there are
11 consequences to lying, to cheating, to stealing, and to
12 bribing. Tell Tony Issa that he can no longer cheat the
13 system, no longer refuse to play by the rules that everyone
14 else must follow. Return the only verdict that is consistent
15 with the law and the overwhelming evidence, as well as your
16 common sense. Tony Issa is guilty on all counts.

17 Thank you.

18 THE COURT: Thank you, Mr. Wirshba.

19 OK, ladies and gentlemen. We've heard the
20 government's opening summation. I think that the lunch that
21 we've ordered for you is here, and so we're going to hear from
22 Mr. Brafman after lunch. That will be at 2 o'clock, OK. So
23 have your lunch, stretch, move around a little, and we'll hear
24 from the defense after lunch. Don't discuss the case and keep
25 an open mind.

ICHHIss3

Summation - Mr. Wirshba

1 (Jury excused)

2 THE COURT: I'll see you all.

3 Looking forward to it, Mr. Brafman.

4 Nicely, done, Mr. Wirshba.

5 MR. WIRSHBA: Thank you, your Honor.

6 (Lunch recess)

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ICH5iss4

A F T E R N O O N S E S S I O N

2:05 p.m.

THE DEPUTY CLERK: Case on trial continued.

Government and defense are present, jury is not.

THE COURT: Are you ready?

MR. BRAFMAN: Yes, ma'am.

(Continued on next page)

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Summation - Mr. Brafman

1 (Jury present)

2 THE COURT: Okay, Mr. Brafman.

3 MR. BRAFMAN: Good afternoon, ladies and gentlemen.

4 THE JURY: Good afternoon.

5 MR. BRAFMAN: Don't be put off by the size of the
6 notebook, I write in large letters and I am not going to read
7 it but I have 90 minutes and like the news station, WINS, give
8 me 22 minutes we will give you the world. Give me 90 minutes,
9 that's what I have, I will give you an acquittal, despite
10 everything you heard this morning in a wonderful, well-crafted
11 summation by Mr. Wirshba. It was a good summation -- he left a
12 lot out but it was a good summation.

13 I have looked forward to this moment for a very long
14 time when I finally get to argue my case to you. Now is the
15 time, and although I have looked forward to this moment for a
16 very long time, I'm somewhat awed by the responsibility that
17 attaches when you get up to speak on behalf of someone else,
18 someone else's life. But I'm comforted by a couple of things.
19 One, you pay careful attention to the entire trial, not just
20 the part the government has asked you to focus on; and two, I
21 am comforted by the knowledge and belief that each of you
22 shares in the intensity of this moment when you are being asked
23 to Judge another human being, when you are being asked to
24 decide guilty or not guilty on someone you have never met
25 before. This is government at its best. This, trial by jury.

ICH5ISS4

Summation - Mr. Brafman

1 We pick people who don't know anybody in the case and then we
2 ask you to use your common sense, to wait patiently, pay
3 attention, and you have, and for that I am grateful and it has
4 been a privilege to appear before you and a privilege to appear
5 before the Chief Judge of the Southern District.

6 Ladies and gentlemen, jurors are asked to keep an open
7 mind but that does not mean you should let your brains fall
8 out. I want you to keep your mind and your brains and your
9 savvy and your good sense, everything that makes you get
10 through the day as a New Yorker because if you lose your street
11 sense or your savvy or your common sense, you could convict
12 someone who, under the facts of this case, I submit, is not
13 guilty of the crimes charged. So, I'm going to appeal to your
14 intelligence in this discussion, I am going to appeal to your
15 common sense, and I am also going to appeal to your courtesy
16 and patience that you have extended to me throughout this
17 trial.

18 So, you know, other people will quote a legal scholar
19 or famous Judge and maybe I will do that before I sit down, but
20 first I'm going to quote one of the amazing sports heroes who
21 then got in trouble and led into a horrible life so I'm not
22 asking you to consider him a hero now, but Mike Tyson was one
23 of the best professional heavyweight champions the world had
24 ever seen and he won bouts against other heavyweights in under
25 a minute. And once, after a fight, with I think Michael Spinks

ICH5ISS4

Summation - Mr. Brafman

1 that lasted 59 seconds they said, you know, Michael Spinks had
2 a great fight plan that we heard all about. What happened
3 Mr. Tyson? And Mike Tyson said everybody has a great plan
4 until you get punched in the face. It's a great quote. You
5 know why it is a great quote? Because it is this case.

6 Tony Issa had a great plan, an honest plan, a diligent
7 plan, a real plan. He was going to fill the need that the
8 United States Postal Service had and he was going to do it
9 honestly and legally. And all of the plans that you saw and
10 that we will show you pictures of in a couple of minutes were
11 not built with bribery, were not built on thievery, and he went
12 out to Dearborn and built that plant that Mr. Blight discussed
13 and I will show you and he went to Kingsland, and he went to
14 Brentwood, and he went to Poughkeepsie, hydraulic lifts,
15 mechanics, warehouses, investments of millions of dollars and
16 they want to suggest that he only did it so that he could bribe
17 a couple of guys with meals. And we will talk about
18 everything, I'm not skipping anything, I'm going to address all
19 of the points that Mr. Wirshba made and I'm going to address it
20 because it's very important but I want to tell you a story.
21 Before I do, I just want to reference something that Mr. -- I
22 think I can get a tan in this summation -- I want to reference
23 a part of the summation that was used, a word that was used
24 over and over again -- distraction.

25 Distraction. Mr. Brafman was a distraction.

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Summation - Mr. Brafman

1 Mr. Brafman created the distraction. Did you perceive me to be
2 a distraction in this trial or did I help clarify? Did I bring
3 out material on cross-examination that you need to have before
4 you are asked to decide the fate of another person? I was not
5 a distraction. The only part of the government's summation
6 that I found offensive. I had a vital role to play in this
7 case and I'm going to tell you a story. It is a funny story
8 and you are allowed to laugh if you think it is funny story but
9 sometimes a story makes such a wonderful point.

10 So, you go back to old times when people were riding
11 around in horse-driven carriages and there is an intersection
12 and wagon comes through being pulled by a horse and there is a
13 driver on the wagon. And the dog runs out in the street,
14 scares the horse, the horse rears up, falls on the dog, the
15 wagon falls on the horse and the driver is thrown out.

16 10 years later, there is a lawsuit in the courtroom
17 and the police officer is called by Mr. Wirshba and the police
18 officer said, tell me what the driver said when you walked up
19 to him on that day. And he looks in his memo book and he takes
20 it out and says the driver said "I'm okay. I'm okay,"
21 suggesting that there was nothing wrong with the driver and
22 that this is a false lawsuit.

23 So, then Ben Brafman gets up and says, officer, tell
24 me everything you did and everything you saw before my client
25 said "I'm okay, I'm okay." Well, you know, it was a horrible

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Summation - Mr. Brafman

1 scene and the dog had four broken legs and was screaming in
2 pain. I took out my gun and I shot the dog to put him out of
3 his misery. And the horse was whining and crying on the
4 ground, the wagon had broken his neck, and I took out my gun
5 and I shot the horse to put him out of his misery. And I
6 turned to the driver and the driver said, "I'm okay. I'm
7 okay."

8 Why is that important? Because cross-examination has
9 always been and is in this case the engine of truth. You did
10 not get the whole truth and nothing but the truth on direct
11 examination from any witness in this case. Every single
12 witness, certainly the major three witnesses you were
13 enlightened by issues I raised on cross-examination. So, let
14 me tell you what this case is not about and her Honor will tell
15 you that as well.

16 Would you please put up Exhibit 120?

17 This document was shown to you again and again and
18 again and again and again and again and it is, in my opinion, I
19 submit, worthless. Meaningless. That's what Mr. Issa did not
20 do. The post office may terminate the contract for default, if
21 after notice and a hearing the Service Board of Contract
22 Appeals determines that the supplier or the supplier of agent
23 to other representative offered to give a gratuity or gift to
24 an officer or employee of the post office.

25 Ms. Waters, the lovely woman from Philadelphia who

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Summation - Mr. Brafman

1 testified at this trial testified that that's in every
2 contract. Every witness was shown that document. Every
3 witness said oh, no, I can't take a gift because if I do, I
4 will lose my job and Mr. Issa will lose his contract. That is
5 not what this case is about.

6 That's why on tape when Nicholson and Blight over and
7 over and over and over and over again tell me, you know, I'm
8 not supposed to do that. Mr. Issa's understanding is he was
9 risking his contract and they were risking their job and when
10 he says I don't want to get you into trouble, that's what he
11 means. There is no intent to bribe. It's wrong to do this?
12 Good. Take away my contract. He has his contracts renewed
13 over and over and over again. And they never took way his
14 contract and that's not what we are talking about.

15 I want to tell you what I found also inappropriate in
16 the government's summation. They called my client a thief.
17 That's what he called him. They said Tony Issa double bills.
18 Tony Issa double bills and if you double bill you're a thief if
19 you do it knowingly and intentionally but if they ignored
20 completely what you have heard and what you can have read back
21 is the testimony on cross-examination by Mr. Velez:

22 Mr. Velez, page 599:

23 Does it refresh your recollection from time to time
24 Mr. Issa or people in his company sent you e-mails to notify
25 you that they had received double payment for the same invoice

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Summation - Mr. Brafman

1 from the post office?

2 This refreshes my recollection of Daniela Silva

3 His wife, correct?

4 Correct. She's running the office. I recall her
5 telling me about receiving double payments. I don't recall
6 anybody else telling me that.

7 On behalf of Healey? On behalf of Daniela getting the
8 money twice? Its Duploy?

9 Correct.

10 And she is telling you they got double payment for
11 invoices?

12 Yes.

13 And your answer is, thank you for your honesty,
14 correct?

15 Yes.

16 And that's not the only time this has happened; is
17 that correct.

18 It's happened a bunch of times. Daniela would make --
19 she would send e-mails and let me know that we got double paid.

20 By fixing it the post office would get the money back,
21 right?

22 Yes, would get a credit.

23 So it was Issa's company who brought these mistakes to
24 your attention.

25 That's not a thief. No thief tells the post office

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Summation - Mr. Brafman

1 you paid me twice. Why? If you are intent on stealing from
2 the government. Listen to the instruction that her Honor gives
3 about what it means to steal. It means to intentionally
4 deprive another of their money, not to take it and give it back
5 because they've made a mistake. You can't ignore that
6 testimony if you even think about convicting Mr. Issa of theft
7 of government funds. That's their witness. This isn't a
8 trick. They ask you to believe Mr. Velez but they asked are
9 did you not to believe him when they said they were paying back
10 double-billing.

11 On my opening statement one of the things Mr. Wirshba
12 didn't mention is I said to you welcome to post office crazy
13 land. I said that in my opening statement. Not the people who
14 slosh through, slog through the snow and rain and bring you
15 your mail every day. Not those people. Not the hard-working
16 good citizens but the post office bureaucracy is crazy. There
17 is no method to the madness. And all of the government
18 witnesses who testified in this case told you how bad things
19 are, not because they don't know how to fix it but because it's
20 bad.

21 Delores Waters, she was the first woman and I will
22 describe these people because it seems like a year ago since
23 they testified. She was a middle-age woman, attractive, black,
24 African American lady who worked in Philadelphia and she was
25 involved in this process. She testifies and what you get from

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Summation - Mr. Brafman

1 all of the post office witnesses is that the cars, the trucks
2 that you see delivering the mail, the LLVs -- the long-life
3 vehicles -- have come to the end of their life.

4 Does anyone in this jury, I submit, have a car that's
5 25 or 30 years old that still works or is it up on cinder
6 blocks in somebody's back yard? Nobody can drive a 25 or
7 30-year-old car. And yet, all of their trucks are 25 or 30
8 years old, at least the trucks in this case. And they break
9 down again and again and again and again and the post office
10 can't fix them. And they can't fix them fast enough to get
11 them back in service. So, she acknowledges that they contract
12 out for people like Mr. Issa to do the work. And you saw the
13 contract renewal again and again and again and again.

14 Delores Waters said to you that there is a vetting
15 process, that you have to list references. When you renew they
16 have to determine whether you are capable. Do you think if
17 Tony Issa has a contract for six years that if he weren't
18 capable of doing this that he would get the contracts renewed
19 again and again and again? You can't ignore that. You just
20 can't ignore that. You can't ignore that.

21 So, I want to talk to you about the bribery part of
22 the case. I want to talk to you about the bribery part of the
23 case and I want you to understand that every single person in
24 this case, Velez, Nicholson, and Blight, comes to the table
25 with substantial baggage that should get you offended and get

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Summation - Mr. Brafman

1 you not to agree to believe them beyond a reasonable doubt and
2 I will talk about each of them individually.

3 You know, Mr. Wirshba spoke about hiding, you have got
4 to hide, you have to hide, that's Mr. Issa's life. No it's
5 not. There was testimony by Mr. Nicholson when Nicole, from
6 his office, delivered bottles of liquor on Christmas. She
7 walked in, in front of everybody, put down a card, put it on
8 the desk. She didn't hide, she didn't slink it in the back
9 way. And Nicholson is the one who complains to Issa. Don't
10 let them see that. It's not a corrupt gift, in Mr. Issa's
11 mind, he is giving him a Christmas present. Everything in this
12 case is a bribe. Every single thing that was done is a bribe
13 according to the government, and yet their own witnesses tell
14 you that it's not.

15 So, why is the conversation with Sohail, the man who
16 ran the convenience store, so important? The conversation that
17 he had when Velez was coming in and demanding \$1,500 and
18 Mr. Issa was out traveling and he called him and on the phone
19 Mr. Issa says if you don't give him the money, he will shut me
20 down.

21 Extortion is not bribery. If you pay someone because
22 they're forcing you out of business and they've done nothing
23 wrong, that is not bribery. And that's what you had with Velez
24 and I'm going to take Velez apart piece by piece even though
25 they gave him a literal pass because what happened in this

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Summation - Mr. Brafman

1 courtroom is nothing that you can dismiss so quickly.

2 So, they said to you well, every time Velez ate, it
3 was a bribe. That's just a bad accusation and it is so not
4 true. Look at Government Exhibit 412. This is Mr. Velez and
5 Mr. Issa and several people he has testified who are employees.
6 Yes, Mr. Issa picked up the check. This is a bribe to Velez?
7 You take a friend out to dinner with your employees and you, as
8 the owner of the business who they work for, you pick up the
9 check? That's a bribe? Here, this is a bribe.

10 409, please?

11 This is the lunch in Florida. Who are these people?
12 They don't work for the post office. Velez is out there
13 drinking and having a good time. This is a bribe? This is a
14 bribe, ladies and gentlemen? You get convicted of bribery for
15 this lunch where they have some salads and some beers and these
16 people who are not anywhere near involved? This is a group of
17 men, this is a road trip.

18 You can take that down.

19 And Mr. Velez, who was on there, he wasn't -- he
20 wasn't happy to testify and he left even unhappier but he was
21 Mr. Issa's friend and Mr. Issa saw him as a pathetic, needy guy
22 whose wife he told him had back surgery and who he needed new
23 teeth and those were not bribes.

24 Look at this picture, 414. This is a picture of a
25 briber and a bribee? This is a picture of two friends. And

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Summation - Mr. Brafman

1 when your friend has no teeth and you have money and you get
2 him teeth, do you think that was a bribe? Or do you think that
3 was something nice? Because I will get you to the testimony of
4 Velez where he says I think he was doing something nice for me
5 on cross-examination. But, look at the picture. It's not a
6 bribe, ladies and gentlemen.

7 Now I want to explain something to you because
8 Mr. Wirshba touched on it. He said something to you which was
9 quite remarkable. He said to you Mr. Velez didn't come into
10 the courtroom and lie. Mr. Velez told the truth. Even when
11 Mr. Brafman caught him with the car he told the truth. That's
12 not what happened here. I'm not using my imagination. You
13 aren't either. You remember.

14 First of all, we asked him:

15 Did Mr. Issa lend you \$5,000 for your house?

16 No.

17 And then I probed and I showed him his bank statement
18 and then he said yes. And I said:

19 Was it a bribe?

20 No.

21 So, what was it?

22 It was gift or it was a loan and I paid it back.

23 Now, what person who is getting bribed for years,
24 according to them, gets \$5,000 from the man who is paying
25 bribes and pays it back. And he doesn't pay it back. What

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Summation - Mr. Brafman

1 happens, and it is only after I show him the check when he
2 changes his testimony, is he has his sister-in-law -- the
3 deposit goes into his account and the check comes from his
4 sister-in-law and on it it says "gift." I brought that out.
5 He denied it. He lied.

6 Then let's talk about something else because he is a
7 cooperating witness. He figured out if the agents show up and
8 they say to you Mr. Velez we have \$100,000 going into your bank
9 account, we want you to tell us about Tony Issa. He knows he
10 is caught doing something wrong and they're interested in Issa.
11 He doesn't give them Arafat, he gives them Issa because they
12 have all of this money going into his account. But let me tell
13 you what happens on trial here. I said to him:

14 All of this money going into your account, 500, 500,
15 500, 500, 500. Is that from my client?

16 No.

17 Who is it from?

18 My wife was taking money out of her accountant putting
19 it into my account in cash every week 500, then it went to 500,
20 and 1800 and 13 -- every week the same amount.

21 Nobody banks that way. They ask you to use common
22 sense. They complain if you don't use your common sense to
23 show something that's nefarious. Nobody banks that way. Velez
24 lied and let's talk about the car because those moments don't
25 really happen quite often. Okay?

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Summation - Mr. Brafman

1 You sign an agreement with the government. It's a
2 contract and the premise of the contract is I'm now going to
3 tell the truth. And the government then puts you on the
4 witness stand with the understanding that if you lie, the deal
5 is off. And if you lie, you don't get the benefit of your
6 cooperation. So they say to you, Mr. Velez, what happens if
7 you lie? Well, I could get 15 years. And then he lied. He
8 didn't lie to them, he lied to me and Mr. Wirshba had the
9 temerity to suggest that when confronted with the car,
10 Mr. Velez told the truth. No, he didn't. Ask for Velez'
11 cross-examination on the car back. Here is how it went. You
12 were here, you saw it.

13 Mr. Velez, didn't you get a bribe from Arafat? Didn't
14 he give you a car?

15 I loaned his car. I borrowed his car. He loaned me
16 he his car.

17 No, he didn't. Didn't you register it in Pennsylvania
18 with your wife's name? And then I show him the registration.
19 And suddenly, yeah, I did, but it is a crappy car.

20 We didn't ask you if it was a good car or bad car.
21 You lied about the car and you lied about the car to the
22 government and you lied about the car to this jury and, as a
23 result, her Honor will tell you an interesting legal
24 instruction and you will hear it, and I'm not going to get in
25 trouble by trying to paraphrase it but the substance of it is,

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Summation - Mr. Brafman

1 and if I'm different than what the Court says, like Mr. Wirshba
2 said to you, go by what her Honor says. But what her Honor
3 will tell you is that if you see that a witness has lied about
4 any matter in this case of importance, you are have a right to
5 reject all of that witness' testimony or you can accept as much
6 of that testimony as you want to and then you can reject the
7 rest. So, you now have a right, under the law, to reject all
8 of Velez' testimony if you think he is not trustworthy. You
9 know why he is not trustworthy? Look what he told you. He
10 told you he lied about the house money, lied about the car, and
11 lied about the money going into his bank account, and he lied
12 about the money going into his bank account to protect the
13 people he was continuing to take bribes from after he signed
14 cooperation agreement. Why does that not make sense? You know
15 somebody is telling him. He tells you the money is not
16 Mr. Issa's. He tells you Mr. Issa's money is kept in the
17 basement in my electrical box so you have no proof whatsoever
18 to corroborate the testimony of Mr. Velez other than Sohail who
19 characterized Mr. Velez as a friend who came to the garage and
20 got cigarettes and gas and he got \$200, and when he demanded
21 more and Mr. Issa yelled, what was the substance of that
22 conversation? Pay him or he is going to shut me down.

23 That's what happened with Velez. That's not a bribe,
24 ladies and gentlemen. If it starts out nice and it is done out
25 of friendship and it turns into a shakedown, then Mr. Issa is

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Summation - Mr. Brafman

1 not attempting to corruptly influence Mr. Velez.

2 What did Velez tell you about Issa's operation, unlike
3 Nicholson, Velez did concede that Healey Motors was a real
4 company and that it was doing real work and that Mr. Issa
5 opened it in Poughkeepsie. And here is Exhibit 286, Healey
6 Motors. The inside, working on post office trucks with
7 hydraulic lifts and mechanics.

8 And here is 274. Look at the size of this place. Did
9 he get that for doing a free PMI? Did he invest that in the
10 post office so that he could repair a horn that wasn't
11 authorized? Are we nuts? This is the hardest working man in
12 the history of the United States Postal Service who they gave
13 contracts to again and again and again and again, and the
14 government says he is just a bum who can't do work because
15 Nicholson said that. And we will talk about Nicholson in a
16 minute and decide who is and who is not the bum here.

17 Now, let me read to you to show you why it is not a
18 bribe and Velez tells it to you under oath. And if you get
19 this read back, you know, it is a very nice slide show you saw
20 before, little snippets -- one line, two lines, one line, two
21 lines. That's not how a conversation works. You have to
22 understand context. If I come up to you and say two words you
23 have no word what I'm talking about but this is as clear as a
24 bell. This is Velez on cross-examination, page 636:

25 Does your amount that you are alleging receiving,

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Summation - Mr. Brafman

1 meanings bribes, have anything to do with the amount of work
2 that you were giving Mr. Issa?

3 No.

4 So there was no, I-give-you-this-you-give-me-that?

5 No.

6 This is not Mr. Issa on tape saying no *quid pro quo*.
7 This is their witness before you, under oath, telling you so
8 there is no I give you this, you give me that.

9 No.

10 It is their witness, he said it and you can't ignore
11 that and this is beyond a reasonable doubt on Velez. Velez is
12 beyond a reasonable doubt because he lied in front of you and
13 you have a right to reject his testimony. And we will go
14 through invoices in a minute but when Velez says there is no
15 this for that and he says it to you under oath in the
16 courtroom, should he be believed? And if he is believed,
17 Mr. Issa is not guilty of bribing Velez.

18 Let's talk about Jeffrey Blight. First I want to show
19 you the pictures which demonstrate what Mr. Issa did in Detroit
20 before he paid anything to Blight, before he bought him a meal.

21 Please, put up Exhibit 100.

22 This is Mr. Issa in front of the warehouse in Detroit
23 that Mr. Blight identified. You can see it has a number of
24 entrances. This is 101, it is a picture of the inside where
25 Blight identified a VMF supervisor from another station coming

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Summation - Mr. Brafman

1 to teach them how to do PMIs and if you look down in the lower
2 right-hand corner, you can see the PMI form, the form that we
3 have had so much discussion about in this courtroom in this
4 case. This is before Blight starts complaining about his life
5 and Mr. Issa feels sorry for him.

6 Now look at 104.

7 This is up and running in Detroit and it is a real
8 facility. And look how many trucks are in the process of being
9 repaired. These are all trucks, these are trucks that are 30
10 years old, 25 years old, they're all being repaired. Who are
11 they being repaired by? Not the post office. By Mr. Issa.
12 How is he doing that? Because he has contracts and because he
13 has employees and because he knows how to do it. There were no
14 complaints here about this operation.

15 And look at 105.

16 These are pictures their witness identified. This is
17 not magic. These are trucks in the state of being repaired.

18 Look at 106.

19 More trucks up on hydraulic lifts. No one has to tell
20 you how much this equipment costs. You can use your common
21 sense as New Yorkers to understand that when you open a
22 facility like that it's going to cost you a fortune. Why is he
23 doing that? So he can pay for Blight's daughter's roommate
24 expenses? It is crazy. And they said to you what Mr. Blight
25 said doesn't matter and the circumstances under which what

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Summation - Mr. Brafman

1 Blight said doesn't matter. They're wrong. That's not the
2 law.

3 If Mr. Issa is consumed by concern for someone who he
4 is starting to like, it matters. It determines whether his
5 state of mind is corrupt or whether his state of mind is: *I'm*
6 *going to help this guy.*

7 So, I asked Mr. Blight and I got stopped a lot by the
8 Court, properly so perhaps because this is argument, but over
9 and over and over again what did he tell you? What did he tell
10 you on tape?

11 I told Mr. Issa that I had a daughter who was
12 transferring to Columbia.

13 Did you have a daughter?

14 Yes.

15 Was she transferring to Columbia?

16 No.

17 Why did you make up that college?

18 Wanted to get Mr. Issa to New York.

19 That's why. There is no other explanation because
20 they could have picked up University of Michigan, the guy lives
21 in Detroit. They picked Columbia to get him to New York. So,
22 that's a lie.

23 Did you daughter have a scholarship to Columbia?

24 No.

25 So, when you told Mr. Issa that you wanted to come to

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Summation - Mr. Brafman

1 New York because you wanted to meet with the college advisor,
2 that was a lie, right?

3 Yes.

4 Why? Why do you have to lie again and again and again
5 and again and again so the man you are investigating -- and you
6 are wearing a recorder and he doesn't know you are wearing the
7 recorder. I told you in my opening statement we welcome these
8 tapes because without those tapes they can wiggle out and with
9 those tapes they can't.

10 How many times Mr. Blight did you lie to my client?

11 I don't know.

12 More than 50?

13 It is hard for me to tell.

14 It is not hard to tell. You have listened to only a
15 smidgen of the conversations with Blight. Even on those
16 smidgens there are dozens of times when he lies.

17 Did you lie about her coming to New York?

18 Yes.

19 Did you lie about the stores in New York being
20 expensive and that your wife and daughter are coming?

21 Yes.

22 Your wife and daughter weren't coming, right? That
23 was a lie. And why did you tell Mr. Issa that the stores were
24 expensive with dollar signs on the text? Were you trying to
25 maybe convince them that he could give you a handout because

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Summation - Mr. Brafman

1 you're a poor jerk who has got all of these expenses? Did he
2 tell him that for that reason? There is no other explanation,
3 they haven't offered you any other explanation.

4 113.

5 Read this text. It should make you angry. Let me
6 read the last part. Going on a cruise Father's Day. I will
7 have Thursday and Friday free. The girls plan on hanging out
8 with my wife's friend Thursday and shopping Friday. She
9 scheduled dress fittings for my daughter at some kind of fancy
10 stores out there \$\$\$\$. She deserves it and is worth every
11 expensive penny I'm probably going to spend.

12 Why does he tell Mr. Issa this if not to incur
13 sympathy and charity and a handout? Why would you tell a
14 stranger that and you are burdening yourself to Mr. Issa again
15 and again and again and again.

16 You know I'm right. This should not sit well with
17 you. This may be technically legal but if it is as offensive
18 to you as it sounds to me then you should reject it because it
19 impacts on why Mr. Issa ultimately, after five months of
20 begging and pleading and whining about his life, Mr. Issa
21 finally lets him come to New York and pays for it. Yes, I told
22 you he paid for it but there is a story here and the story
23 isn't work. The story is I'm dying, I can't pay for my
24 daughter.

25 And then you know how desperate Blight becomes and you

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Summation - Mr. Brafman

1 want to know why you should just write him off? Because he
2 ultimately says I have to get back because my mother is having
3 a heart operation. What kind of a person does that? Well, I
4 needed to make up an excuse to go back to Detroit. So tell him
5 you left your car at the airport. Tell him someone is watching
6 your dog. Tell him you have to go back to work. Tell him
7 painters are coming to your house. Who lies about their mother
8 needing an operation to a stranger when it is not true? And
9 why are you lying to Mr. Issa?

10 You know there used to be a quiz show 60 years ago --
11 I'm dating myself -- people would come on and tell the sorriest
12 tales you ever heard. And it was a terrible show because
13 people would come out and they would talk about all of their
14 problems. And then the person who had the worse problems would
15 win a washing machine. It was such an offensive show. Today
16 couldn't do that, but then nobody cared about what was right or
17 wrong. That's what you are watching here. You are watching a
18 quiz show where you are trying to get my client to bleed for
19 you.

20 And you look at the stories and then -- then -- he
21 tells you when the story had played itself out and Tony wanted
22 to have dinner and Tony was going to have dinner with his wife
23 and our wives. Oh my God, he is turning this into a couples
24 dinner and I want to turn it into a bribery case. That's when
25 the mother dying comes in, to save him from that stupid excuse.

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Summation - Mr. Brafman

1 And I asked him:

2 Are you trying to get Mr. Issa to like you?

3 Okay.

4 Did you make believe that you liked Mr. Issa?

5 In the beginning when we first started working in
6 Detroit, yes, I did.

7 Did you also, on these tapes, make it appear like you
8 liked him when you had these jovial three-hour meals where a
9 lot of personal stuff was exchanged about your families?

10 Yes. I wanted Issa to like me. I liked him, I wanted
11 him to think that I liked him. I told him things to make him
12 feel story for me.

13 That's not how a bribe works. It shouldn't be allowed
14 to work that way where you whine and whine and whine and beg
15 and beg and beg and then ultimately, when the generous man and
16 the kind man finally succumbs to this. He didn't ask him for
17 money in Detroit. You want to fix this case and finish it?
18 Hey, Tony. I'm Jeff Blight. You want to work here and build
19 these factories? Pay me. Then we have no argument.

20 This is offensive. And just remember something else
21 that's offensive. You talk about telling the truth, you talk
22 about me being a distraction. When Mr. Blight was on the
23 witness stand he made it seem like there was a text that he got
24 from Mustafa, Mr. Issa's son, that said my father wanted to
25 talk to you about something personal and he didn't want you to

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Summation - Mr. Brafman

1 talk about it in the post office. Remember that? That is what
2 he thought was so scary that he ran to OIG and he ran to OIG
3 because they had locked up a bunch of VMF people in Detroit and
4 he was afraid Mr. Issa was investigating him. So when Mr. Issa
5 said I want to talk to you about something important and I
6 don't want to talk to you on the phone or in the post office
7 and we walked out to the garage and then he tells you what
8 Mr. Issa talked to him about, that wasn't true and eventually,
9 ultimately, conceded after much fighting and discussion, that
10 what Mr. Issa really wanted to talk to him out in the yard and
11 what he did talk to him about out in the yard is the fact that
12 one of the mechanics, Jeff, was making racial comments and he
13 didn't want to talk about it in the post office. That's
14 understandable. You are accusing someone who works there of
15 this kind of misconduct?

16 I brought that out, they didn't bring that out. It
17 was their tape. They didn't play that portion. They get to
18 pick what portions they can play. They did not play that
19 portion. I showed him the transcript and refreshed his
20 recollection.

21 It is just not right, ladies and gentlemen.

22 Now the lie gets better. My daughter is coming to New
23 York, I can't afford the room and board. It is going to cost
24 me \$20,000.

25 First of all, why are you telling me that when it is a

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Summation - Mr. Brafman

1 complete fabrication? I want somebody to ask that question and
2 if you can answer that question other than in the way I'm going
3 to answer it, then I will stop.

4 Why are you telling Mr. Issa, a stranger that your
5 daughter's room and board is going to cost \$20,000 a year when
6 it is a lie, when she doesn't have room and board in New York
7 and when, I submit, you are saying that because you want him to
8 feel bad for you and you want him to ultimately reach into his
9 pocket and give you something of value. There is no other
10 reason. No other reasons. And then, listen to this when
11 Mr. Issa says it is stupid, there are apps for this, I will get
12 her four girls who want to share an apartment. It will cost a
13 couple hundred dollars a month and she will share an apartment.
14 That's what people do. Don't let her rent an apartment up at
15 Columbia alone for \$20,000. Get a roommates. There are people
16 we know. He says my family is doctors up at Columbia. They
17 know the area. And then the government turns that into part of
18 the bribe. When I ask him and this is important, when I asked
19 him on cross:

20 He says to you that's crazy, you can get three or four
21 girls who are going to school and you could work as roommates
22 and they would all share the expenses. didn't you say that?

23 Yes.

24 Did you think when he said that he was getting
25 sinister, being sinister, or was he being nice in your mind?

ICH5ISS4

Summation - Mr. Brafman

1 I don't know.

2 Well, if he told you his family had doctors up in
3 Columbia where she would be living and he would help you find a
4 place --

5 Correct.

6 -- you think he was getting a bribe or bribing you
7 with that information or trying to help you with your daughter?
8 The truth, as you sit here now.

9 I don't know how to answer. I don't know if he was
10 trying to bribe me or not. I don't know.

11 That's a reasonable doubt. Ladies and gentlemen, at
12 page 307-308 of the transcript that ends the discussion with
13 Jeff Blight, I submit, even if he did give him money because in
14 his mind, even in his mind, he thinks Issa is trying to help
15 him because maybe he is a nice guy. And, that's still not a
16 crime. It is still not a crime in the United States to be
17 nice.

18 Page 367:

19 At some point you were concerned that by pushing the
20 Columbia story it was like getting a little bit absurd?

21 Well, absurd, and it wasn't working.

22 What do you mean it wasn't working? You got him all
23 excited by helping your daughter. What wasn't working about
24 the Columbia story that caused you to stop?

25 The whole thing for me was the fact that Mr. Issa

ICH5ISS4

Summation - Mr. Brafman

1 wanted to meet with my wife and daughter, you know, and that
2 situation.

3 So he had a friendly dinner in mind and you had an
4 undercover investigation in mind and you stopped it, correct?

5 Correct.

6 Don't you see what happened, ladies and gentlemen?
7 They turned friendship into something corrupt and then when the
8 corruption became so stupid because it was a fabrication, he
9 pulled the plug. Why did he tell the plug? Because he had
10 lied so many times.

11 You know, from another generation, my mother's
12 generation, they used to say if you lie, you better have a good
13 memory. If you tell the truth it always comes out the same.
14 Here he is, my mother, my father, my daughter is coming to New
15 York, my mother is having a heart operation, Columbia, a
16 scholarship, an interview. It is all a lie. And then when he
17 says my daughter and my wife want to have dinner in New York,
18 Issa says that's great; my wife and I will have dinner with
19 you. And suddenly Blight is reporting to the agents, oh my
20 God, this guy thinks I really want to have a friendly dinner
21 when all I want to do is do an undercover sting.

22 Don't you see what happened, ladies and gentlemen?
23 I'm so happy that these conversations are recorded because the
24 contemptibility of what Blight is doing should jump off the
25 page for you.

ICH5ISS4

Summation - Mr. Brafman

1 You know, if I take a pizza with a lot of toppings and
2 I throw it against that wall, the pizza is going to fall to the
3 ground but stuff is going is to stick on the wall, the wall is
4 going to be stained. And whether it is anchovy or tomato sauce
5 or cheese, that wall is going to be stained but the pizza is
6 going to fall down. Throw all of this stuff at the Issa, maybe
7 Brafman will be asleep at the switch, throw it at Columbia,
8 throw it at the wine at the restaurant. Throw everything at
9 Issa because the jury will think whoa, whoa, whoa, whoa, whoa,
10 what's going on here? And I submit to you, most respectfully,
11 that Blight playing the sympathy card again, and again, and
12 again, and again should end your discussion. And let me tell
13 you a piece of testimony that should, as a practical matter end
14 the discussion as to Blight. Page 311.

15 Why do you need all these money bells and whistles
16 for? You thought it would help the conversation, right? Isn't
17 that the honest truth?

18 Well, I mentioned that about the hardship, yes. I
19 interjected that.

20 Because you thought it would help get Mr. Issa to help
21 or discuss helping you?

22 I would say yes.

23 And you are recording that, right?

24 Yes; for law enforcement. Yes.

25 Let me read that again because I submit with great

ICH5ISS4

Summation - Mr. Brafman

1 respect I am reading it again only because to me, when I wrote
2 this down, I wrote on the sticker "bingo" because I wanted to
3 remember this little piece to give you and you need to remember
4 it. It is at page 311:

5 Why do you need all these money bells and whistles
6 for? You thought it would help the conversation, right? Isn't
7 that the honest truth?

8 When I mentioned that about the hardship, yes, I
9 interjected that.

10 Because you thought it would help get Mr. Issa to help
11 you or discuss helping you, right?

12 I would say yes.

13 So, when Mr. Issa is talking on tape about helping
14 Blight and he helps Blight, it is because he tried to get him
15 to help by talking about his hardship. This isn't me, this is
16 him, it's their witness. You can't excuse this, you can't
17 erase it, and if this isn't a reasonable doubt there is no
18 reason. There is no reasonable doubt. Her Honor will instruct
19 you that a reasonable doubt is a doubt for which you could give
20 a reason and it is a doubt that an intelligent, reasonable
21 person would use to pause before doing something of importance
22 in their life. This is something that should make you pause
23 because it's Mr. Issa's life but you're the ones who are going
24 to be making a decision and they can't get around this.

25 You know, they get up for another half hour after I

ICH5ISS4

Summation - Mr. Brafman

1 sit down, it is a terrible rule but I have to live with it and
2 we all like to have the last word in the discussion. They get
3 up after I sit down. There is no answer. And Mr. Wirshba
4 saying as many times as he can that what Mr. Blight said and
5 what Mr. Nicholson said and how they said it and why they said
6 it is completely irrelevant. It is not irrelevant, it is the
7 heart of the case because her Honor will charge you that in
8 every crime that Mr. Issa is accused of, the most important
9 element for you to decide, I submit, is his state of mind, his
10 intent. Did he have a corrupt intent? Was he trying to get
11 generalized goodwill with this post office employee? Because
12 if he is, I submit you have to find him not guilty. Listen to
13 the Court's instructions, don't go by what I said but wait to
14 hear the phrase generalized goodwill. This is generalized good
15 will. And you know who told you that? Blight. He said he is
16 trying to help me, not get work, he is trying to help me help
17 my daughter.

18 You know what else is just terrible about what
19 happened in this trial? People made up stuff. They made up
20 stuff, that's what I think he meant when Mr. Issa said I wish
21 you could have a purposeful life, he said that meant pay for
22 play. And I am sitting there listening to this and I am saying
23 to myself, that expression is never used in any of the
24 recordings. So, I then challenged him on it. I said:

25 Did Mr. Issa tell you the words pay for play? Did he

ICH5ISS4

Summation - Mr. Brafman

1 use them?

2 Page 360.

3 What about the pronunciation of purposeful don't you
4 understand?

5 Purposeful, I understand.

6 Does it have to mean money?

7 No.

8 It could mean a genuine relationship, right?

9 It could, yes.

10 And depending on the purpose it could be very good and
11 legal and honest?

12 Yeah. It could mean anything.

13 And the word prosperous could mean the same thing,
14 doesn't it?

15 It doesn't have to be a negative connotation, correct?

16 Yes.

17 And when he said purposeful you told the jury that you
18 meant it was pay for play; is that right?

19 I did say that, yes.

20 In your own mind you meant that, correct?

21 Yes.

22 You understood that?

23 Yes

24 But there is nowhere in any of the tapes does he use
25 that expression ever.

ICH5ISS4

Summation - Mr. Brafman

1 I don't recall.

2 You would recall if he used the words pay for play,
3 wouldn't you?

4 If he used the words, yes, I would.

5 He never did, did he?

6 No.

7 My client says purposeful and he says pay for play.

8 You know, we play these games with children you come
9 up with the word, they come up with the word. If I said to you
10 have a purposeful life, would you ever in your wildest dreams
11 come up with the words pay for play? Mr. Issa doesn't. It
12 fits the narrative now, what could he possibly mean, possibly
13 mean if pay for play? It is called feeding the tape. I'm
14 wearing a tape, I know I'm wearing a tape. I am trying to make
15 the conversations sound sinister even though they document me
16 whining and whining.

17 At various times in these conversations where you knew
18 it was being recorded Mr. Issa, in words or substance said he
19 would never do anything illegal to get you in trouble, correct?

20 That was said, yes.

21 And this was one of the places where, starting at line
22 17, I am devoting why a tape -- so I am telling you right now,
23 take this to your grave. I would never ask you to complete
24 anything that's illegal. That would be against your job.
25 Nothing, never, never. You know why? Because if I do, it's no

ICH5ISS4

Summation - Mr. Brafman

1 good for me.

2 He loses his contract, ladies and gentlemen, and
3 Blight loses his job. That's what the fear was, not a bribe.
4 These guys were feeding the tape. Nicholson, when he said I
5 can't do this, I can't do this, I can't do this. Tony, you
6 shouldn't do this.

7 You know what else bothers me? I am just going to say
8 it and get rid of it so I have said it.

9 Expensive dinner \$650. Nicholson ate like he was
10 getting out of jail. He didn't have to eat stone crabs and
11 crab cakes and sirloin steaks. He could have had a salad. He
12 knew the bill for the meal was going to be used by the
13 government as evidence of a bribe so make it as high as you
14 can. And he is a little bit of a wise guy too and we will get
15 to it in a minute, but I don't want to lose this thought.

16 When Mr. Solowiejczyk put up on the screen the bottles
17 of wine do you remember that moment when Nicholson volunteered
18 on his own when nobody asked him a question "oh, the good
19 stuff." That's when the Barolo wine was shown and Nicholson
20 said "oh, the good stuff." He changed a little bit when he
21 started his cross-examination I think you will agree, but when
22 he was on direct examination he was a big shot, he was a wise
23 guy and we will get to him in a minute but Blight, Blight's
24 conversation is critical to whether or not you can convict.

25 This is Blight again, I just have to read you these:

ICH5ISS4

Summation - Mr. Brafman

1 You know Mr. Blight, I'm almost done but I want to ask
2 you: When you are talking to Mr. Issa sometimes in these
3 conversations like a friend who you are unburdening yourself
4 to?

5 Yes.

6 So, how does Mr. Issa know?

7 I am asking you, forget what he said. How does
8 Mr. Issa know I'm talking to you as a friend then I put on my
9 undercover agent hat, now I'm talking to you as someone who is
10 getting bribed, now I'm talking to you as a friend, now I'm
11 putting on my hat. That's not proof beyond a reasonable doubt.
12 That's not how a conversation is supposed to sound when you are
13 doing an undercover operation. Why are you trying to be my
14 friend if you are trying to put me in prison? Because I want
15 you to like me and I want you to think I like you so maybe you
16 will buy me dinner. And if buying dinner is a crime, ladies
17 and gentlemen, then nobody would be walking around. And, yes,
18 I know he is a public official so take away his contract.
19 That's what happens if you give a gratuity to a post office
20 person. A gratuity is not a bribe. Her Honor will tell you
21 the difference and it is a huge difference.

22 Everything that Mr. Issa said to him and all of these
23 conversations about willing to help his daughter and any
24 recommendation he had or any time he said anything like that,
25 it was just twisted and it was turned into something that was

ICH5ISS4

Summation - Mr. Brafman

1 venal and corrupt and it was not. I submit to you that it was
2 not, ladies and gentlemen.

3 Now I want to talk a little bit about the invoices and
4 then I'm going to spend a lot of my time on Mr. Nicholson and
5 then some time on the tax case and then it will be the last
6 time you hear from me again unless we run into each other in
7 the street years from now. And, then you can say hello if that
8 should happen. Millions of people in New York, the odds are
9 not great that that will happen.

10 But, let me tell you a little bit about the invoices.
11 So, we already covered the fact that Mrs. Daniela Issa --
12 Daniela Silva -- wrote to Velez on a couple of times about
13 double-billing. And Mr. Velez' response on the witness stand
14 here was thank you for your honesty.

15 So, now they're telling you under this count, which
16 charges the defendant with stealing from the government, that
17 on a handful of invoices that they culled out of tens of
18 thousands because you heard about the millions of dollars of
19 work that Mr. Issa was getting from the post office and there
20 are only a few hundred dollars or a few thousand dollars a
21 piece so you have a right to assume that there are thousands
22 and thousands of invoices, they took a couple, a handful, and
23 now two years after they are submitting they are telling you,
24 oh, man, you were stealing from the post office and I want to
25 talk to you about it.

ICH5ISS4

Summation - Mr. Brafman

1 First, let's talk about the argument that there was
2 shoddy work. There is no proof whatsoever that Mr. Issa got
3 under a truck and tried to fix it. There is no proof
4 whatsoever as to who the mechanic was who did the work. There
5 is no proof whatsoever for who the manager was that supervised
6 that work. And, there is no proof whatsoever that Mr. Issa
7 knew that these invoices were being submitted at the time they
8 were submitted because it's not now two years later when you
9 say that invoice shows that you meant to steal. They have to
10 show intent to take that money and keep it at the time the
11 invoice was submitted, not two years after the fact. And let
12 me tell you the problems that they have. Okay? The problems
13 that they have are as follows.

14 First of all, we are working on a truck that's 25, 30
15 years old. I don't want to belabor that, everybody has agreed
16 that that's an accurate statement. I want you to think about
17 that for a second.

18 25-year-olds little truck that's driving through snow
19 and rain 24 hours a day, six days a week, nonstop, 25 years.
20 None of you has ever driven a car like that, I submit, unless a
21 friend let you borrow one of their cars that they're trying to
22 fix up and keep as a show piece. So, that's not what we are
23 talking about.

24 And they break. And the post office knows that so
25 that's why they require two Preventive Maintenance Inspections

ICH5ISS4

Summation - Mr. Brafman

1 a year. So, there are hundreds of thousands and they require
2 two a year and Ms. Waters told you that there are hundreds of
3 thousands of vehicles and they require different inspections
4 but the people who testified said it was twice a year.

5 So, right away you have probably half a million
6 inspections on trucks and that's not counting the breakdowns.
7 If it breaks down outside your house somebody has to tow it to
8 the shop, somebody has to fix it. What are the charges? What
9 is the requirement? You have to fix it overnight so it can be
10 back on the road the next morning because we can't replace it.
11 If we don't have the truck, you don't get your mail and the
12 post office always delivers its mail. So, the entire mainstay
13 of the post office delivery system is breaking apart as we
14 speak and Mr. Issa and others are charged with fixing it.

15 But, understand something, the post office has
16 acknowledged that they can't do it. All of the people who
17 testified to you told you that the vehicle maintenance
18 facilities are understaffed and they don't have enough trained
19 people to do it so they rely on people. So that was the plan.
20 Mr. Issa had a real plan. You know what entrepreneurs do in
21 the United States when they want to be successful? They find
22 something, a need that needs to be filled or they create an app
23 today or they create a business that nobody thought of before
24 and then they create the business, they invest in the business,
25 they run the business, they train people.

ICH5ISS4

Summation - Mr. Brafman

1 How many people do you think Mr. Issa had to employ to
2 keep Poughkeepsie and Brentwood and Kingsland and Detroit and
3 all of those places running and in operation, the size of the
4 facilities that you saw? How many people do you think he
5 needed to employ? And who was paying those people? And what
6 an operation? First you have to find a mechanic and you have
7 to train the mechanic and you have to find a mechanic who is
8 willing to work in the middle of the night. Not everybody
9 wants to work in the middle of the night so your work pool is
10 reduced. And he found the people to do the work. And, yes,
11 there was some problems with the invoices but, on balance, he
12 was getting them their trucks back. And while Mr. Nicholson
13 and other people can pick apart some of his invoices, that's
14 not fair and let me tell you why it is not fair.

15 If we can put up Exhibit 2049B, please, the one with
16 the form?

17 This is one of the invoices that Mr. Nicholson
18 testified was a fraud. This was Mr. Issa trying to steal and
19 he pointed to two things. He pointed to \$53 charge, we fixed
20 the horn. We fixed the horn, he said, we weren't authorized to
21 fix the horn, it was \$53. That \$53 is theft. The invoice is
22 \$3,600 so we had a \$53 item on there that he didn't authorize.
23 Take it off. Take it off. He said no, I was operating under
24 the direction of OIG. They don't want to help you fix the
25 invoice. You go to a mechanic and he gives you a bill for

ICH5ISS4

Summation - Mr. Brafman

1 \$2,000.

2 What are you talking about?

3 I didn't want my mirror changed.

4 Well, it was broken.

5 I didn't authorize that.

6 Okay, don't pay for the mirror.

7 That's commerce in America. In a dry cleaning store,
8 delivery service, in an air conditioning repair. But, no, you
9 submit this invoice and you have a horn on there that we didn't
10 authorize you to fix, we are going to indict you for stealing
11 from the post office and you are going to go, possibly, to
12 prison.

13 And let me tell you something else that came out on my
14 cross-examination, not on direct. I submit to you that on
15 direct examination nobody on the government's team pointed to
16 the names of the supervisors who are listed on the invoice and
17 Mr. Nicholson recognized that, that's André Noel. He works for
18 him, and on redirect you know what the government pointed out?
19 Who puts that name down there? Well, the vendor, meaning the
20 vendor can put down a name and he doesn't mean that he
21 supervised it. Yes, it does. Do you know why? Because if the
22 supervisor's name is on there, the supervisor didn't authorize
23 this. All Nicholson needs to do is walk over to the next bay
24 where Noel is working and say, André, did you authorize this
25 horn? Because he told you that while the authorizations were

ICH5ISS4

Summation - Mr. Brafman

1 supposed to be in writing, verbal authorizations were okay with
2 supervisors.

3 Every one of our invoices has a supervisor's name,
4 they work in Brooklyn across the bridge. They have the burden
5 of proof. They could bring Noel in, they could bring Willie
6 Weiss in, they could bring Andre Cox in and say did you guys
7 ever authorize this work? No. Well, I submit to you, ladies
8 and gentlemen, this is a reasonable doubt because they get this
9 two years ago, it is submitted in 2015, almost four years ago,
10 and they're sitting with this invoice and we are ready to
11 pounce? You submitted a repair for a horn for \$53 and instead
12 of taking it off, instead of doing what Daniela did when she
13 knew that they double-billed, just call them and say on invoice
14 9404 that was not authorized. Do you think they would fight
15 with the post office over the \$53 or they would say just pay
16 the \$3,500?

17 It is just so unfair, ladies and gentlemen. I just
18 want to do one other thing and then I'm going to leave this
19 alone but I was so stunned when this happened in the courtroom
20 and I know where -- a big deal was made on invoice after
21 invoice about the charge of \$70 for exterior wash. Do you
22 remember that? And all of the witnesses said that that's
23 covered in the PMI and the PMI says clean car inside and out
24 and you can't charge if you wash the car. And then what
25 happened? What happened when Blight was on the witness stand?

ICH5ISS4

Summation - Mr. Brafman

1 What happened? What did I do? I showed him the rule book.

2 This is the post office rule book. You need Exhibit
3 112A before you even think about convicting Mr. Issa on any
4 charge of theft of services because every invoice, over and
5 over again, he charged for a wash and a wash is covered by the
6 PMI. And then I put the rule book up and, lo and behold,
7 Brafman found a rule that the post office ignored. Estimated
8 repair time shown on the back of form 4456B was calculated
9 assuming the use of an automatic truck washer. At 0.3 hours if
10 the vehicle is hand washed, and 0.2 for cleaning windows and
11 inside of vehicle.

12 How is that proof beyond a reasonable doubt that I was
13 trying to steal when I charged you for washing your truck when
14 it is not covered by the PMI? Because the rule book that tells
15 you how to interpret that tells you, you have a right to charge
16 another half hour almost if you have to do this by power wash,
17 and even though the PMI says clean inside out, this provides
18 that you can charge for a washing the windows.

19 This isn't proof beyond a reasonable doubt. This is
20 sloppy. Look at this, this is Government Exhibit 1060, you
21 have seen it so many times I am sure you don't want to see it
22 again. Here is the "clean inside out," item 12. It doesn't
23 say wash. Okay? If you want to prove proof beyond a
24 reasonable doubt say wash car, inside out. This is the English
25 language, it is not that hard. So it doesn't say it. All

ICH5ISS4

Summation - Mr. Brafman

1 right?

2 So, let's assume that my client thinks that he is not
3 supposed to wash the car because under the PMI it is covered.
4 You have to assume that my client who is a mechanic also know
5 the post office rules that they should know that if you are
6 doing the wash, you can add extra time, and extra time is
7 labor. And extra time is labor. And what did he charge on
8 every one of these invoices? He didn't make up a number, it is
9 the exact same charge on any invoice for a wash. It's \$70.

10 And when I asked him what happens if you have to drive
11 the truck to the car wash? He said well, you know, it's time.

12 That's right. Somebody is driving it, you are paying
13 them, that's labor costs. That's how business works and we
14 didn't take advantage of it. Again, all they had to do was say
15 I'm not paying for the wash and then Mr. Issa and his mechanic
16 could bring this rule book to Mr. Nicholson and say it's your
17 rule book. We are following your guidance

18 Ladies and gentlemen, they're accusing my client of
19 stealing \$70 on a \$2,000 invoice when you are allowed to charge
20 labor. If you look, they're referring you to this. This is
21 estimated lime, ladies and gentlemen. This is the standard
22 estimated time on the bottom of this exhibit, 1060. This is
23 form 4546 that the rule book addresses. Estimated repair time
24 to perform a PMI on a light delivery vehicle is 1.5 hours. ERT
25 to perform PMI on a light delivery vehicle, if it is a CNF

ICH5ISS4

Summation - Mr. Brafman

1 engine it is two hours, on a bigger car it is 3.5 hours.
2 They're telling you you can add more time.

3 (Continued on next page)

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ICHHIss5

Summation - Mr. Brafman

1 MR. BRAFMAN: (Continued) That is not a crime. That
2 is not an intentional crime. It is not proof of intentional
3 criminal conduct. And you can't just decide to convict
4 Mr. Issa on this because it's easy, because the government
5 suggested or Mr. Nicholson suggested that his repair work was
6 shoddy. Ladies and gentlemen, I don't have to prove anything.
7 I just proved that they don't have proof beyond a reasonable
8 doubt as to the washing of the car.

9 You know, I'm going to talk to you about taxes for a
10 minute and then I'm going to spend the rest of my time on
11 Mr. Nicholson.

12 You know, we're playing basketball, and they bring in
13 the revenue agent who spends his entire life just doing this,
14 analyzing, and they're bringing LeBron James to play with
15 Tsamutalis. That's who we have. We have Chris Tsamutalis and
16 Mousouris, and they bring in LeBron James. They bring in a guy
17 who just does this and he does it perfectly and maybe he's the
18 greatest revenue agent in the history of America, but that's
19 not how this works. We don't have to compete with him.

20 Look what he did. He spent eight weeks after the fact
21 in a case that's four years old that he had nothing to do with
22 and now for eight weeks he's sitting in a room and he's
23 analyzing these returns, trying to find something wrong, and he
24 finds stuff that he doesn't agree with. He didn't say it's a
25 fraud. He didn't say Mr. Issa is guilty. He's saying to you:

ICHHIss5

Summation - Mr. Brafman

1 I don't agree with that. You know what? On some of the stuff
2 he is just flat-out wrong. He's just wrong. Even LeBron James
3 sometimes misses a free throw. He's wrong.

4 First of all, I submit that there's evidence in the
5 record that if I run my own business and I got to place in
6 Poughkeepsie and I got a place in Brentwood and I got a place
7 Brooklyn and I have a place in Manhattan and I got to go in
8 Queens, I got to go upstate and to Westchester, and all I'm
9 doing all day is driving to these places, with the evidence
10 suggests Mr. Issa is always at, that car is tax deductible. I
11 don't care how many revenue agents you bring in. They're wrong
12 on that. And the judge is not going to instruct you on what is
13 and what is not tax deductible. That's a business car and if
14 you have a business car and it's a legitimate business car, the
15 business can pay for it. The rules are different, and he's
16 wrong. And if you park a business car near your home so that
17 you can save time getting to work by having it there, the
18 garage is deductible.

19 Let me tell us something else that he's wrong on. If
20 I pay my dentist through my own company and I am the only
21 shareholder and it's my company, it's not a crime to use the
22 company check to pay him. Because if I'm putting 50,000 into
23 the business and I'm putting \$170,000 into the business, no one
24 is giving me any credit for that. So if I have 100,000 in what
25 you call personal expenses and I put in hundreds of

ICHHIss5

Summation - Mr. Brafman

1 thousands --

2 MS. HANFT: Objection.

3 THE COURT: The objection is sustained.

4 Ladies and gentlemen, you will recall something.

5 Mr. Brafman is not a witness in this case, and you will decide
6 the case on the basis of the evidence that came from witnesses
7 in the case and exhibits in the case and my instructions about
8 what is legal and what is not.

9 MR. BRAFMAN: Thank you.

10 Ladies and gentlemen, from the witnesses in this case,
11 you heard testimony about the following: On direct
12 examination, Mr. Berzansky, the revenue agent, said he treated
13 the \$170,000 in one way and then on cross-examination by
14 Mr. Kirshner, he said he treated it a different way. And you
15 saw the check. It's in evidence. It's made out to Tony Issa,
16 and he did not give Mr. Issa credit for that.

17 I submit that one of the things you need to understand
18 is what was Mr. Issa's state of mind at the time? Did he
19 intentionally try and violate the law, or did he have a good
20 faith basis to believe that what he was doing was not a crime?
21 And one of the things that is absolutely clear, when Mr. Issa
22 and his wife get the tax deficiency from the IRS, he goes and
23 he hires a tax lawyer. He doesn't run away to the Bahamas. He
24 hires a tax lawyer. The tax lawyer, God help us, hires Chris
25 Tsamutalis, and Tsamutalis said five times on his testimony

ICHHIss5

Summation - Mr. Brafman

1 that he didn't get paid to do this; I was getting paid to do
2 that; I did only as little as I had to. He was getting paid
3 \$300 an hour. That's what the contract says. He was getting
4 paid \$300 an hour, and he didn't do his job. He didn't do his
5 job, ladies and gentlemen.

6 So I'm running a cash business and, according to the
7 government, my intent is to steal and my intent is to lie and
8 my intent is to cheat. Why is Claudia Betancourt, who you saw
9 and met and I think you believe, the woman who worked at
10 Capital One, why is she keeping careful track of every dollar
11 in and every dollar out? Why would you want to have that paper
12 trail if you're running a cash business and all you want to do
13 is shove the cash into your pockets?

14 How careless are they to say any money that says for
15 Tony goes on Mr. Issa's side of the ledger, and yet the
16 testimony and the evidence shows that when it says for Tony, it
17 could be for Tony or it could be at Tony's direction, it could
18 be for a part, it could be for a series of parts, it could be
19 for cash payroll. And let's understand something. You have
20 seen no evidence put in by the government as to the extent of
21 the payroll. You don't know whether one person -- we know
22 Sohail worked there and we know Claudia works, but you didn't
23 see any evidence put in by the government, who has the burden
24 of proof, to show you what is the size of the cash payroll?
25 How many people are working in these garages and gas stations?

ICHHIss5

Summation - Mr. Brafman

1 These trucks don't fix themselves.

2 You have a right to use your common sense. When you
3 see a warehouse the size of Yankee Stadium with trucks inside
4 in different states of repair, somebody's doing the work. So,
5 yes, under New York State law, which he's not charged with,
6 he's not supposed to use a cash payroll. And to the extent
7 that people were getting cash payroll, you don't expect to see
8 them lining up wanting to be witnesses in a federal courtroom.

9 So the government has the burden of proof, but a
10 failure of proof is also a reasonable doubt. A failure of
11 proof is on their side of the ledger. And on these counts,
12 ladies and gentlemen, they don't make it out to be a crime.

13 I want to say something else which you can agree or
14 disagree with. It's just my submission or surmise, and you can
15 reject it or you can accept it. There's parts of the tax case
16 that were completely incomprehensible, I submit. You can look
17 at those charts for the rest of your life. There were parts of
18 their case on the tax part that were completely
19 incomprehensible. And if you went in there and had to take a
20 quiz on those items, you'd say: Oh, yeah, a lot of numbers, a
21 lot of charts. I don't know whether Claudia's telling the
22 truth. I don't know whether the revenue agent is telling the
23 truth. I don't know whether Tsamutalis, Mousouris, Berzansky,
24 I don't know. I don't know. When you don't know, you vote not
25 guilty. You don't vote guilty when you think that they've made

ICHHIss5

Summation - Mr. Brafman

1 a case, and you don't vote guilty because you think Mr. Issa
2 owes taxes and since I pay my taxes, why should I let him go?
3 You don't convict someone because the nature of the crime to
4 you is personal because you pay taxes, and you don't convict
5 without proof beyond a reasonable doubt. And the government
6 has to explain these counts to you and they have to prove them
7 to you beyond a reasonable doubt so that you can go in there
8 and have some degree of certainty that what you're doing is
9 right, and they did not do that.

10 What they did was they threw the pizza against the
11 wall again on the tax count. They put a lot of numbers up and
12 put the dentist bills, boom, boom, boom. We'll make the
13 assumption that the jury will see that he's paying personal
14 bills out of his own account; therefore, he must be guilty.
15 Nobody told you that. The agent told you what he would allow
16 and what he wouldn't disallow, what he would allow, what he
17 didn't allow. We got a notice from the government to come
18 down. Of course there was a deficiency notice. The deficiency
19 notice says in 2014 you owe this kind of money. We want to
20 hear from you. We're going to keep the interest running until
21 we hear from you. He went to a tax lawyer. Tax lawyer hired
22 Chris Tsamutalis. They advised him not to go to tax court.
23 Their testimony is they advised him to file an amended return.
24 He filed an amended return. They never heard from the IRS
25 again. You heard the testimony. There was no audit. There

ICHHIss5

Summation - Mr. Brafman

1 was no meet and greet: Hey, we got your amended return. We
2 think this is not right. Next thing you know, he's indicted
3 for tax fraud.

4 You know, when your adversary is the government, even
5 when your adversary is, you know, relatively young, although
6 they did a great job, your adversary is the government, the
7 government. They have unlimited resources. They have
8 everything at their disposal, and the defendant doesn't. The
9 defendant, even a successful defendant, can't match the
10 government pound for pound, and they don't have to because
11 that's why the burden of proof is on the government.

12 So let me talk to you about James Nicholson. And
13 there's something really interesting about what happened in the
14 summation of the government. They made believe that something
15 here didn't happen. It did happen, and you need to understand
16 it. Now, it's not my job to embarrass anyone, and I didn't.
17 The minute Nicholson broke down, I stopped questioning him.
18 They continued to question him. But when he broke down and
19 began sobbing on cross-examination, I stopped. We took a
20 break. When we came back, I stopped cross-examining him. The
21 point was made, I submit.

22 So what happened? What happened? This was the
23 strongest, most powerful, most solid witness in the history of
24 America, I submit, on direct examination. Every question, yes,
25 no, never a hesitation, never fumbling for a document,

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Summation - Mr. Brafman

1 volunteering information when it wasn't asked for. In your
2 face, big, tall, tough, strong guy. Tony Issa is a bad guy and
3 me, James Nicholson, I'm going to get him. And that's what
4 happened here, right?

5 In this case Nicholson thought he was going to be
6 phased out. I'm going to read it to you in a minute. That if
7 you let Tony Issa be successful, then you wouldn't need these
8 dinosaur VMFs who can't get the job done anyway. So Nicholson
9 assumed, you know what? If I'm being told to use Tony Issa, I
10 smell a rat. So I'm going to go to OIG, and I'm going to tell
11 them: I, Jim Nicholson, am going to wear a wire. And I, Jim
12 Nicholson, I am going to be Mr. Undercover Agent, and I'm going
13 to get this guy.

14 You know what happened, ladies and gentlemen? He was
15 a robot on cross-examination -- on direct examination. I've
16 never seen or you should never -- you would never think you
17 could get somebody that well-prepared. And then a couple hours
18 into cross-examination, when we were starting to pick away at
19 this veneer that was a fraud, it began to unravel. And I
20 submit to you, you can make whatever decision you want to make
21 about his demeanor, but Her Honor will tell you that you have a
22 right to decide who to believe based on what they say, how they
23 say it, and their demeanor when on the witness stand.

24 And you, I submit, must have been stunned when,
25 relatively soon into the cross-examination, this guy who was

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Summation - Mr. Brafman

1 the tough guy of the case began to sob. Why? Let me tell you
2 why. You hang around grandchildren long enough, you hear a lot
3 of stupid stuff. I'm hanging around them and I hear a lot of
4 stupid stuff. Every once in a while you also hear something
5 really cute. I hear you can peel an orange or it can all come
6 off in one case if you're careful and you practice. You can
7 peel an apple, and you can get the peel off in one piece. You
8 try peeling a grape. You can't peel a grape. You have to peel
9 it piece by piece. You peel a grape by taking away a piece,
10 taking away a piece, and when the grape is completely peeled,
11 you know what's left? Mush. Because the shell of the grape
12 protects the grape. We were peeling that grape in front of
13 you.

14 I'm not trying to be an offensive. This is the big
15 leagues. You come into a public courtroom and you accuse my
16 client of crimes and then when you start your
17 cross-examination, you tap out. You know, in the wrestling
18 ring, in the ultimate fighting ring, there's a rule that when a
19 fighter taps out, you stop. You don't want to kill the guy.
20 You're supposed to win the fight. He tapped out and he tapped
21 out just when the cross-examination was getting tenacious. So
22 I may be a good cross-examiner, but not to make that happen.
23 Because all I asked him, remember: When you got Mr. Issa to
24 agree to have lunch, what did you say to your OIG handler? I
25 said, "Fish on." Remember that? That's what he said, "Fish

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Summation - Mr. Brafman

1 on." Because all Mr. Issa had to agree to is lunch and he was
2 cooked, as far as Nicholson was concerned. Didn't have to do
3 anything at lunch. Issa was going to go to lunch, Nicholson
4 was going to eat, and Nicholson knew Issa would pay, and boom,
5 they got him. When I said to him: Well, you're a fisherman.
6 You talk about fishing on these tapes over and over again.
7 What did you mean when you said, "Fish on?" You know what he
8 said? I don't know. I don't remember.

9 Now, I'm not a fisherman. You don't have to be a
10 fisherman to understand that when a fisherman says to an
11 undercover agent who's his handler, "Fish on," the only two
12 words he uses, so I kept away at it until he finally said:
13 Yeah, I understand. I understand. And "fish on" means when
14 you finally get the hook into the fish and you can reel that
15 fish in, that the fish is going to end up dead.

16 That's why when Mr. Issa -- Mr. Nicholson got crazy a
17 few weeks before the trial, remember when I said to him: Did
18 you scream at the OIG people and say, Why isn't this man in
19 prison yet? Eight weeks ago. Because I don't think he ever
20 thought that Mr. Issa would go to trial, and now that he's on
21 trial, he's not liking what's happening. Well, you know why?
22 We have a trial first, and then if you convict him, if the
23 judge determines that's the appropriate sentence, that's when
24 you talk about prison. You don't do it before the trial unless
25 you're Nicholson whose only objective was to get Tony Issa out

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Summation - Mr. Brafman

1 of business because then you don't have to worry about Tony
2 Issa doing such a good job they're going to replace the
3 Brooklyn VMF.

4 And how do we know that I'm right? We know that I'm
5 right because Delores Waters told you I'm right. How can that
6 happen, Mr. Brafman? You making that up? No, I'm not making
7 that up. Let me show you. I showed Mr. Nicholson a contract
8 that Mr. Issa got from the post office in which more money was
9 added to his contract because it was going to be extended to
10 cover the Triborough district, if you recall, Brooklyn,
11 Jamaica, and Staten Island. Remember that the government put
12 it in evidence. I don't think they even read their own
13 exhibits sometimes. 105H. And what it is, is -- 105H is a
14 contract with First Star and Mr. Issa, and the new total amount
15 for this award \$2,885,000. The adjustment is almost a million
16 dollars more.

17 What does it cover? It covers Triborough. And what
18 does it cover it? I showed Mr. Nicholson. It covers the
19 Brooklyn VMF. And remember he identified his finance number.
20 Now, this contract is signed in -- effective date is 2014.
21 2014, that's four years ago. And he said to you under oath:
22 That's the first time I've seen that contract. I had no idea
23 he had a contract over my facility. He's lying. You know how
24 I know he's lying? Because Delores Waters testified to how you
25 get these contracts and what happens when they send out a

ICHHIss5

Summation - Mr. Brafman

1 solicitation: When you give somebody a contract that services
2 post office vehicles, it's important that you identify a
3 qualified supplier who can perform the work. We have taken
4 into consideration your past performance, your capability, your
5 pricing to make a determination of who offers the best value to
6 the post office. We also get information from the VMFs, from
7 the VMFs, as to the valuation of suppliers.

8 This is her testimony, page 54:

9 "Q. You mentioned that you handle U.S. post office
10 contracting. Who initiating the contracting process for
11 vehicle maintenance?

12 "A. We receive requirements from what would be a vehicle
13 maintenance facility. Before they shove this supplier down
14 your throat, they need to know that you need the work, the
15 help.

16 "Q. All right. Now in the circumstances where the postal
17 service decides to enter into a contract, how does your office
18 determine with whom to contract?"

19 Please listen carefully. This is the end of
20 Nicholson's testimony.

21 "A. Well, this process we go through when we talk about the
22 acquisition process, we would receive a requirement from a
23 facility."

24 That's the VMF. In this case, it's Nicholson's VMF.
25

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Summation - Mr. Brafman

1 "We would solicit those requirements. We would send
2 out a solicitation package to a source list of possible
3 sources." Mr. Issa is one of the possible source. "We would
4 get the proposals, we'd evaluate their proposal, and in concert
5 with the requesting office, we would make a best value
6 determination as to who should receive the contract award."

7 Ladies and gentlemen, we take into -- we take under
8 advisement the opinion of the requesting office. Nicholson is
9 the requesting office. Even if he denies it, that's what she
10 says. This is an extension of a legal contract to cover the
11 VMF that Nicholson operates, and he tells you it's the first
12 time he ever saw it was in this courtroom. He can't tell you
13 that he saw it before or the whole story falls apart. His
14 whole obnoxious false story goes in the crapper if he tells you
15 the truth.

16 Mr. Nicholson told you he went to check out Mr. Issa's
17 facility, and on direct examination said: Ahh, I didn't like
18 it. There was no guard at the door. Remember that? And that
19 suggested to him this guy really doesn't have a company.

20 Can you put up 326C, please.

21 So this is the entrance to the facility, the long
22 driveway.

23 You can take it down.

24 This is 326A, and this is the facility. Now, it's
25 big. It's got a lot of truck bays. And that's the facility he

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Summation - Mr. Brafman

1 looked at, OK, and that's the facility he said: Ahh, I wasn't
2 impressed with the facility.

3 Then 326B actually shows post office trucks in there
4 in some state of repair.

5 So that's the facility at Kingsland that Nicholson
6 said was not up to snuff. He didn't like it. And then we
7 showed him Brentwood. Brentwood is another facility by
8 Mr. Issa. And Brentwood, he said, was a state-of-the-art
9 facility. So this is Brentwood. So that's the facilities of
10 Mr. Issa.

11 So here's Mr. Nicholson's vendor of choice, one of his
12 vendors of choice, Unico. This is what he wants to see. He
13 wants to see Unico, this guy with the garage that can fit one
14 truck, and if a truck's gone in, another truck has to come out.
15 That's what he wants. We've got 80,000 square feet -- I'm
16 making up a number -- of truck bays and hydraulic lifts, and
17 that's not good.

18 Ladies and gentlemen, Nicholson said on Government
19 Exhibit 302P, Nicholson on page 134: "No, I understand, but I
20 also like to keep the VMF viable. If these guys in the station
21 can do that, they'll cut us out and throw us to the dogs";
22 meaning, if the independent contractors can do the work,
23 they're not going to need Nicholson and the people who he is
24 looking to protect.

25 Page 5 of the same transcript: "I like to see what's

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Summation - Mr. Brafman

1 going out. Don't want to turn it over to the station because,
2 all of a sudden, they'll phase me out of everything, you know
3 what I'm saying?"

4 Then he says to Tony: "Tony, I'm enjoying all of
5 this. I just don't want to go get into trouble." He doesn't
6 want to take a meal because he could lose his job.

7 Mr. Issa tells him: "All right. There's no problem.
8 We're not looking to make trouble for you."

9 And when he says there's no quid pro quo, yes, normal
10 people don't talk like that, but if you want to make certain
11 that you're not committing a bribe and you say that, they say
12 that's evidence that you're guilty. If I say I want to commit
13 a quid pro quo or I'm giving you a quid pro quo, then you're
14 also guilty. So what does an honest person say when they want
15 to make certain that they're not committing a crime? They
16 can't take it and twist it.

17 Nicholson's saying: I'm enjoying all this. It's all
18 very nice, it's all very nice, it's all very nice, and then --
19 let me go through a couple more. I've got eight minutes left
20 and then I'll stop.

21 This is Mr. Issa, 303D, Mr. Issa: You never asked me
22 to do anything illegal. Never ask for any -- to jeopardize
23 your job, nothing. All I ask is that you do your job, but try
24 and let me -- get me in there. But never, for example, I'm
25 never going to ask you, for example -- God forbid, there's no

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Summation - Mr. Brafman

1 quid pro quo, and I said before, there's no if this, then that.
2 Meaning, I'm not buying you lunch to get the work. Tony Issa
3 wants to be able to compete. He has the contract for that VMF,
4 and they're standing in his way because they're protecting
5 their own turf. And that is not bribery if all you're trying
6 to do is your job, I submit.

7 Then Nicholson says: The post office, in their
8 infinite wisdom, you know, I shouldn't be at lunch with you.

9 And Issa says: If it makes you feel any better, I
10 have lunch with all of the people. And Issa says: If you said
11 to me: Hey, Tony, you want some of my trucks? And I go, yeah,
12 I do. OK. Well, then do this for me, that's illegal. That's
13 Mr. Issa saying that if it's giving you something in return for
14 something, that would be illegal, and I don't want to do that.

15 And Mr. Issa goes on: If you say to me, if you want
16 to get this contract, you have to do this --

17 Nicholson: Uh-huh.

18 Issa: -- that's not allowed.

19 Nicholson: OK.

20 Issa: You got it?

21 Nicholson. Got it.

22 Which means then you're using your power and your
23 influence to get something personal, and I don't want you to do
24 that.

25 How much more innocent can you sound when you don't

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Summation - Mr. Brafman

1 know you're being recorded by a man who is feeding the tape to
2 get you to incriminate yourself? That's a reasonable doubt.
3 He has to intend to bribe him, and here when he doesn't know
4 that he's being listened to, he's telling him I don't want to
5 do this if it's illegal.

6 They tell me I'm stealing from the post office.

7 Mr. Issa: Let me tell you, with the PMIs, let me help
8 you out. I'll tell you something. Anything you don't like, I
9 will not charge you.

10 Isn't that him saying tell me what's wrong with the
11 invoice, and I'll take it off? Isn't that how mechanics deal
12 with customers in their normal life? He's telling him, bring
13 it to my attention. He's not doing the repairs. Tell me and I
14 won't charge you.

15 And here I want to stop with this. This is the last
16 transcript and then I'm just going to close because I have only
17 five minutes. This should be the end of the case.

18 Mr. Issa says: You think I'm taking you to lunch and
19 I expect anything from you? Then don't give me anything.

20 I'm going to read it again: You think I'm taking you
21 to lunch and I expect anything from you? Then don't give me
22 anything. I don't want to put any pressure. All I'm saying to
23 you is this: If I can help you with something, let me help
24 you. That's fair. It's not a bargain. You don't have to give
25 me stuff. If I can help you. It's not a bribe if I can help

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Summation - Mr. Brafman

1 you. I'm a legitimate contractor. I have the contract.

2 Ladies and gentlemen, we learned a lot of stuff in law
3 school and then 45 years later you forget a lot of stuff. But
4 I learned something which I will never forget, and I hope you
5 don't either. It's a simple statement. "Maybe" does not cut
6 it in a criminal case. The word "maybe" is not enough to reach
7 out and take someone else's life. Maybe doesn't cut it in a
8 criminal case. And maybe a few maybes -- maybe none of the
9 words mean anything. Maybe they do and maybe he's not guilty.
10 Maybe all of the words mean something, and on balance, Mr. Issa
11 has more exculpatory statements on these tapes than inculpatory
12 statements.

13 There are a lot of smoking gun innocent statements
14 that I just read to you, and they say, ignore them. Maybe Jim
15 Nicholson broke down because he knew we had exposed him as a
16 liar, and he was embarrassed. Maybe, I don't know, he was just
17 having a bad day. He didn't have a bad day the day before.
18 And maybe Velez lied on the witness stand because he thought he
19 could get away with it, and he didn't. Maybe Blight whined and
20 whined and whined to Mr. Issa so he could get him help, get him
21 help, get him to New York, help him, and then charge him with a
22 crime because it's not a help, it's a bribe.

23 You know, the building down -- this building is named
24 after a very, very famous man and a very good man, Daniel
25 Patrick Moynihan. It's the Moynihan Courthouse, I believe. He

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Summation - Mr. Brafman

1 had a great quote once. He said everyone is entitled to his
2 own opinion, his or her opinion, but not to their own facts.
3 The government is not entitled to develop facts out of whole
4 cloth and they are not entitled to ignore facts and they are
5 not entitled to ask a jury to convict someone based on surmise
6 and speculation. And you remember when Mr. Mousouris, the
7 accountant who got a non-prosecution agreement, the accountant
8 should be in jail, but the accountant, remember what he said:
9 I had suspicion. And I said: Thank you. We're talking about
10 reasonable doubt, not suspicion. Maybe doesn't cut it.
11 Suspicion doesn't cut it.

12 Listen, they go last. It's a terrible rule, but it's
13 the rule because they have the burden of proof. So when I sit
14 down, I think Ms. Hanft is going to address you for 30 minutes,
15 and I don't get up to say anything. So you have to two do
16 things: First of all, you have to listen, because you're
17 courteous people, but you also have to think, what would
18 Brafman say if he had another ten minutes, if he could get up
19 to respond? They don't get the last word in this case. You
20 do, the last two words, two words that are not guilty.

21 Ladies and gentlemen, I want to say one other thing.
22 Regardless of your verdict, I want to thank you for serving.
23 Over the holidays when you see family and friends and they talk
24 to you, Where you been? and you're finished with the case and
25 you're allowed to talk about the case and the case is over,

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Summation - Mr. Brafman

1 you're allowed to talk about this, and someone says to you:
2 What, you served on a jury? What's wrong with you? grab them,
3 don't fight, but just grab them and say: You're wrong. Jury
4 duty is important. Jury duty is a very, very important civic
5 responsibility. Don't you try and get out of jury duty.
6 Serve. It's inconvenient. Sometimes it's not fun, but it's
7 important to a democracy that says before the government can
8 reach out and take someone else, they got to convince 12
9 ordinary citizens, not lawyers, not judges, just people.

10 When you go into the jury room and you look at each
11 other and when you finally able tomorrow to talk about the
12 case, I would like you to look at each other, and you'll see
13 what I've seen for the last two weeks. Just normal people.
14 You're all different. There's no common denominator. You've
15 got different backgrounds, different races, different
16 religions, I assume, different age groups. You know what you
17 have in common? You said you would be fair. You would be
18 fair, that's all I'm asking, you to be fair, that you would
19 apply the law, that you would respect the presumption of
20 innocence that Her Honor has spoken to you about.

21 Finally, ladies and gentlemen, I'm going to ask you
22 something else, two things, and then I sit down. Don't
23 compromise your verdict. You cannot go in there and say:
24 Well, you know, the government spent a lot of time and money
25 and they brought this case; we'll give them a couple counts.

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Summation - Mr. Brafman

1 And Issa did a good job; we'll give him a couple counts. No,
2 any count that you convict Mr. Issa of has substantial
3 potential consequences, and you shouldn't do it unless you
4 believe beyond a reasonable doubt that he is guilty.

5 And second, I'm going to say this which you may not
6 understand until the time comes. It's very easy to convict
7 because the government is asking you to and he's been indicted
8 and you're in a courthouse and he's the accused and he's the
9 defendant. Very easy. Hey, everybody else said guilty. Takes
10 a lot of courage to acquit. You have that courage. You have
11 that courage to come out and say not guilty, because it's the
12 right verdict under the facts of this case and under the law as
13 Her Honor will charge you. And if it's the right verdict, it's
14 the right verdict.

15 Thank you very much. Have a good holiday season.

16 THE COURT: OK. Let's take a ten-minute break,
17 stretch break, and then we will be back, and the government
18 will deliver its rebuttal closing under a rule that defense
19 counsel understandably chaff under, but it is manifestly not
20 unfair.

21 OK. Do not discuss the case. Keep an open mind.

22 (Jury excused)

23 (Recess)

24 THE COURT: All right. Are we ready?

25 MR. SOLOWIEJCZYK: Yes, we fixed the issue, Judge.

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Rebuttal - Ms. Hanft

1 Thank you.

2 THE LAW CLERK: Jurors?

3 THE COURT: Yes, please.

4 Remember, Ms. Hanft, less is more.

5 MS. HANFT: Thank you, your Honor.

6 (Jury present)

7 THE COURT: All right, ladies and gentlemen, the
8 government has the burden of proof, so the government gets to
9 be the last voice that you hear commenting on the evidence.

10 Ms. Hanft.

11 MS. HANFT: Thank you, your Honor.

12 Well, ladies and gentlemen, you've just heard from
13 LeBron James. Mr. Brafman mentioned LeBron James, and you've
14 just heard from him. I think over the past couple of weeks
15 we've all seen Mr. Brafman is a very talented attorney, but
16 even LeBron James cannot escape the overwhelming evidence in
17 this case. Even LeBron James can't talk his way out of this
18 one.

19 Let's talk about that overwhelming evidence. Let's
20 talk about the things that Mr. Brafman stood here for 90
21 minutes talking and didn't mention.

22 Did you hear Mr. Brafman talk about the white
23 envelopes of cash that Tony Issa left for Ismael Velez week
24 after week after week? Did you hear Mr. Brafman mention those
25 emails on which Tony Issa says: What's the use of your stupid

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Rebuttal - Ms. Hanft

1 accountant if we can't avoid taxes? Mr. Brafman accused the
2 government of leaving things out. Well, Mr. Brafman left out
3 some of the most important evidence in this case, and so I just
4 want to take you back through some of that evidence.

5 First I want to point to a few of the things that
6 Mr. Brafman just said in his summation that were just plain
7 wrong. I don't have time to go into everything, and I'm sure
8 you'll be thankful that I don't go into everything. As Judge
9 McMahon has reminded you many times, it's your recollection
10 that controls. It's the things that you heard and you saw in
11 this courtroom that control, and it's the evidence that
12 controls, not defense counsel's arguments and not my arguments,
13 not the screaming and the yelling. So when you go back into
14 the jury room and start deliberating, don't be afraid to look
15 at the evidence, the facts. That's all we're asking you to do.

16 Here are a few examples. And again, there are more,
17 and you should go back and look at them. Do you remember
18 Mr. Brafman just stood here and said: Well, there were no
19 complaints about Mr. Issa's work before Mr. Blight started
20 going out to dinner with Mr. Issa? That's not what happened
21 here. Mr. Blight took the stand, and he testified that he
22 wasn't happy with Mr. Issa's work way back when he was at the
23 Detroit VMF. He said he almost completely cut back Tony Issa's
24 work. Look at the transcript. You'll see that.

25 Another example. Mr. Brafman talked about Nicholson.

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Rebuttal - Ms. Hanft

1 Look how much Jim Nicholson was eating at these lavish meals.
2 Look at how much he was enjoying the food. It wasn't
3 Mr. Issa's idea for Mr. Nicholson to take food home to his
4 wife. Well, guess what? It was. Look back at the transcript
5 and you'll see. You'll see who was pushing these lavish food
6 orders. You'll see whose idea it was to get a meal to take
7 home to Mr. Nicholson's wife.

8 Mr. Brafman spent most of his summation just now
9 talking about the ulterior motives that the witnesses in this
10 case had. Jim Nicholson didn't like Tony Issa and was worried
11 Tony Issa would put him and the VMF out of work, and Jeff
12 Blight lied to Tony Issa. And I know Mr. Brafman said he
13 didn't like this word, but guess what? These things are a
14 distraction. Mr. Brafman is desperately trying to get you to
15 focus on everything and everyone else other than what his
16 client did and what his client said. You heard those tapes and
17 you saw that video. You know exactly what Tony Issa did and
18 said. You saw and heard it with your own eyes. So no matter
19 how hard Mr. Brafman tries to distract you by talking about
20 other people, let's talk about Tony Issa. What did Tony Issa
21 say?

22 Let's look at the first slide, Mr. Concepcion.

23 Tony Issa said: "I want to help you. I got to help
24 you. Listen, I'm the kind of person, it's a two-way street.
25 We help each other."

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Rebuttal - Ms. Hanft

1 What else did he say? "Me, you and I, we have a
2 mutual relationship that we can both benefit from." So those
3 are some of the things Tony Issa said, and you've heard a lot
4 more of them throughout this trial.

5 What are some of the things Tony Issa did? Well, he
6 took Jim Nicholson to \$600 lunches, asking him practically in
7 the same breath for work, for PMIs. He paid Israel Velez
8 envelopes of cash, eventually thousands of dollars in each
9 envelope. And I'll get back to Ismael Velez, but Mr. Brafman
10 didn't once talk about those envelopes of cash. He talked
11 about trips and he talked about meals, but cold hard cash is
12 something different.

13 What else did Tony Issa do? He paid Jeff Blight
14 \$2,000 in cash, passing him surreptitiously a napkin filled
15 with cash under the table at a restaurant in Chinatown. So
16 don't lose sight of these things when you go back in there,
17 into the jury room. Mr. Brafman can't make the facts
18 disappear, and the facts are that Tony Issa paid people bribes,
19 people with no connection to one another, to get work from
20 them. It's as simple as that. Follow the facts.

21 So let's talk briefly about Jeff Blight because
22 Mr. Brafman did. Well, one thing Mr. Brafman forgot to mention
23 is before Jeff Blight came to New York, he told Tony Issa that
24 his daughter was no longer going to Columbia. Remember
25 Government Exhibit 258? He told -- and you can look at that

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1 back in the jury room. Here we have Government Exhibit 258 on
2 the screen. He told Tony Issa: "Well, guess what? My
3 daughter decided not to switch colleges. It's a huge weight
4 off my shoulders, my checkbook. I'm coming to New York alone."
5 And Tony Issa said: "Great. I'll get a free pass, and we can
6 go crazy."

7 How could Mr. Issa have given Mr. Blight \$2,000 just
8 because he told him his daughter was going to Columbia when he
9 knew well before he passed him the money that his daughter
10 wasn't going to Columbia? When defense counsel argues that
11 Blight tricked Issa into giving him the money because he told
12 him that his daughter was switching schools, don't forget about
13 that fact that Mr. Brafman conveniently left out.

14 Also don't forget about Mr. Tony Issa saying on tape
15 to Mr. Blight: "You should come back to New York. This trip
16 doesn't count. Come for longer next time. We'll go to
17 Broadway shows. We'll enjoy the city more." Again, how could
18 that invitation have anything to do with Mr. Blight's daughter
19 and her scholarship?

20 Finally, don't forget it was Issa who offered to pay
21 for the trip, not Jeff Blight. Jeff Blight never asked Tony
22 Issa for a dime. You can pore over the transcripts over and
23 over again, and you will not see Jeff Blight asking Tony Issa
24 for a dime.

25 Now, as to Nicholson, Jim Nicholson, Mr. Brafman took

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Rebuttal - Ms. Hanft

1 a long time to go after Mr. Nicholson. Respectfully, your
2 common sense tells you Jim Nicholson was a postal employee who
3 came forward because he was concerned. He didn't have a vested
4 interest in the case. He agreed to record Tony Issa at the
5 direction of the OIG. He was a man who had no reason to be
6 here, ladies and gentlemen. He committed no crime. He wasn't
7 being forced to testify. There is no benefit to him to be part
8 of this investigation or to have to testify for days in this
9 courtroom.

10 But at the end of the day, it doesn't matter, because
11 he didn't make Tony Issa say the things he said. He didn't
12 make him pay for the meals. He didn't make Tony Issa give him
13 the tablet computer, the bottles of wine, and the alcohol. So
14 again, Nicholson, Blight, their motives don't matter, but they
15 had no ulterior motives, and you know that based on your common
16 sense. This is about Tony Issa's intent and what Tony Issa
17 intended when these gave these things, these gifts, these
18 meals, these trips, and this cash to the VMF managers.

19 You know, Mr. Brafman spent quite a long time talking
20 about Jim Nicholson, but he didn't mention everywhere on the
21 tapes where Tony Issa is plying Jim Nicholson for work, in the
22 same breath asking for work as when he's giving Nicholson
23 colossal stone crabs and steak and, of course, spinach which we
24 heard all too much about at this trial.

25 Now, Mr. Brafman talked about the things that Tony

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1 Issa said that -- you know, Tony Issa insisting over and over
2 again that he wasn't trying to do anything illegal. Oh, he's
3 just talking about the postal regulations. Well, guess what?
4 The word "illegal" has nothing to do with the postal
5 regulations, and Mr. Issa said that he wasn't doing something
6 illegal over and over again.

7 We've all heard that expression about protesting too
8 much, haven't we? In other words, sometimes somebody says
9 something, denies something so strongly over and over again
10 that you know it's the truth. They just say it too many times
11 for it to be believable. That's what we have here. How many
12 times does Tony Issa tell Jim Nicholson there's no quid pro
13 quo? I'm not giving you meals in exchange for work. Can I get
14 some work? Can I get some work? Can I get those PMIs? Hey,
15 here's a free tablet computer. Can I get those PMIs? Don't
16 worry, as long as I just tell you over and over again, utter
17 the magic words "there's no quid pro quo," we'll be fine.
18 That's not how this works, ladies and gentlemen. Saying the
19 magic words "no quid pro quo" doesn't mean you insulate
20 yourself from committing a crime. You know that it wasn't
21 true, and you know there was a quid pro quo with each of these
22 VMF managers.

23 Mr. Brafman suggested you can't just ignore the
24 context of a conversation. You can't just look at snippets.
25 And that's right, and if you look at the context of these

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1 conversations, you will see that Tony Issa intended to get work
2 with his bribes.

3 By the way, who talks over and over and over again
4 about not trying to do something illegal? Somebody who's
5 committing a crime. Somebody who knows the shit inside out, as
6 Tony Issa says. Tony Issa knew he was doing something illegal.

7 By the way, does defense counsel want you to believe
8 that the fact that Velez gave millions of dollars' worth of
9 work to Tony Issa's company while Tony Issa just started giving
10 more and more and more money to Velez is just a coincidence?
11 He didn't mention that in his summation either. It's not a
12 coincidence. It's because the money was a bribe for the work,
13 and your common sense tells you that that's the only
14 explanation.

15 Mr. Wirshba went over this with you, and I just want
16 to briefly review. There are many, many ways that you know
17 that Tony Issa knew he was doing something illegal. I'm going
18 to focus on one of them. Tony Issa tried to hide what he was
19 doing. He tried to hide it over and over and over again.
20 There are countless examples you've heard about during this
21 trial. If Tony Issa was just taking friends out to eat, giving
22 a friend some money to come to New York, giving a friend
23 envelopes of cash because he felt bad for him or because he was
24 extorted, why would he need to keep that a secret? He
25 wouldn't. You know that.

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1 Let's review some of the ways he tried to hide his
2 tracks. Well, he told Jeff Blight more than once: You better
3 reserve the trip to New York in your own name so nobody would
4 know that Tony Issa was involved. He even told him that when
5 he reimbursed Blight. He said: Don't go paying it all in one
6 shot. That's too obvious. Once Jeff Blight got to New York,
7 he said: Good thing you reserved this in your own name.
8 Again, these are all in the tapes, and you can listen to them
9 when you go back in the jury room. He handed Jeff Blight
10 \$2,000 in cash under a table and after his employee got up to
11 go to the bathroom.

12 Remember Ismael Velez? He told Ismael Velez not to
13 deposit the cash he was giving Velez in a bank account so the
14 money can't be traced. And remember that visit Tony Issa made
15 to Velez after Issa had been arrested? He told Velez not to
16 say anything about the money, to say that he'd never given
17 Velez any money if anyone asked. If he wasn't doing anything
18 wrong or if Velez was just somehow extorting him, why would he
19 need to say that?

20 Finally, you've heard about the computer tablet that
21 Mr. Issa gave Nicholson. He told Nicholson he removed the
22 Daimner name from the tablet he gave him and then he did that.

23 Also, who is constantly talking about federal agents
24 and about being wired? Remember when Issa told Blight, I could
25 be a federal agent right now in the middle of dinner and showed

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1 Blight his chest to show him he wasn't?

2 If we could look at the second slide. He patted Velez
3 down in the freezer aisle of the Giant supermarket to make sure
4 Velez wasn't wearing a wire. Mr. Brafman didn't mention either
5 of these in his summation, and that's because these make it
6 obvious. Only someone who's doing something illegal would be
7 constantly talking about federal agents.

8 (Continued on next page)

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ICH5iss6

Summation - Ms. Hanft

1 MS. HANFT: Now, turning to Ismael Velez.

2 Mr. Brafman spent a lot of his summation attacking
3 Ismael Velez and we told you at the beginning of this case that
4 you should scrutinize his testimony carefully and we told you
5 he committed serious crimes, just like the defendant. But
6 there were few things that Mr. Brafman conveniently ignored
7 when he was going after Ismael Velez in his summation.

8 First, you shouldn't forget that Mr. Velez was
9 approached well after Tony Issa's arrest. You heard the
10 evidence months after Tony Issa was arrested Velez is
11 approached by OIG agents and he admits to having accepted
12 bribes from Tony Issa. Tony Issa had already been charged.
13 Why would Velez make up that he was accepting bribes so that
14 he, too, could be charged, so that he could turn himself in to
15 the marshals, so that he could face time in prison? He pleaded
16 guilty and he admitted to accepting bribes from Tony Issa.

17 People don't lie to get themselves into trouble.
18 People lie to get them self out of trouble.

19 Second, this is not a one-witness case and you know
20 Ismael Velez isn't lying because of all the other evidence, all
21 of that evidence supports what he said here on the stand, the
22 text messages, the photographs, the testimony of other
23 witnesses like Sohail Butt, the receipts.

24 I submit to you, ladies and gentlemen, that defense
25 counsel's attacks on Ismael Velez are another distraction.

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Summation - Ms. Hanft

1 This isn't United States v. Ismael Velez, this is United States
2 v. Tony Issa.

3 Mr. Brafman's best defense is to get you all focused
4 on Velez that you forget all of the damning evidence against
5 Tony Issa, all of it independent of anything Velez said. What
6 is Mr. Brafman even staying that Mr. Velez lied about? Did he
7 lie about the trips to Florida?

8 Government Exhibit 410, if we could pull that up?
9 There is evidence of the trip.

10 Government Exhibit 414, Mr. Brafman showed you that
11 too.

12 Government Exhibit 415? Did he lie about the lavish
13 meals?

14 Let's look at Government Exhibit 406, Government
15 Exhibit 407, Government Exhibit 250P.

16 Did he lie about the envelopes of cash? Well, let's
17 look at what Sohail Butt said. Sohail Butt, an employee of
18 Tony Issa who had to be ordered to testify, Sohail Butt had no
19 reason to lie about this. Pulling up the transcripts, lines 23
20 to this, from this very trial, what does Mr. Butt say? He was
21 asked:

22 Why would you give cash to Izzy?

23 He said, because he came in with Tony and Tony
24 introduced me and I thought he was working with him from his
25 shop and I thought he was maybe a supervisor. So, the first

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Summation - Ms. Hanft

1 time he asked me \$200 to give to him.

2 Do you remember when Ismael Velez said that same
3 thing? After that first trip when they were coming back from
4 Healey, he and Tony Issa, when Tony Issa threw the two \$100
5 bills into his car, he said the next time he went to Tony
6 Issa's gas station and he met Ismael Velez and they were
7 talking in the back room -- and you can go look at this
8 transcript -- near Sohail Butt's office and Tony Issa said --
9 and you heard this from Ismael Velez and you heard this from
10 Sohail Butt -- give him \$200 when he comes by.

11 Let's look at page 694 of the transcript. Sohail Butt
12 again:

13 After that first time you just told us about, did Izzy
14 come to the station regularly to pick up cash?

15 Yes.

16 Approximately when did he start coming?

17 Normally he come every week.

18 In what year did he start coming?

19 I think May, May, June, I'm not sure. But I think
20 May, June 2013.

21 When did he stop coming to pick up cash?

22 He stopped coming the last time I saw him on July 31st
23 or 30th on 2016.

24 Again, if you look back at Sohail Butt's testimony,
25 and you look back at Ismael Velez' testimony you will see they

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Summation - Ms. Hanft

1 track very closely. You know what else Mr. Velez' testimony
2 tracks? It tracks Tony Issa' playbook. Tony Issa's playbook
3 that my colleague Mr. Wirshba spent some time talking to you
4 about this morning. Everything about how Tony Issa bribed him
5 and started small and escalating it is all corroborated by what
6 you heard and saw with Nicholson and with Blight and with your
7 own eyes and ears. Defense, again, is focusing on Ismael Velez
8 to try to get you to take your eye off the ball and forget
9 about all the other evidence showing that his client is guilty.

10 And, by the way, if Velez was just going to make up
11 some story from accepting bribes from Tony Issa wouldn't he
12 make up a better one? Why would he tell a lie in which he
13 demanded more money? That should suggest to you that Ismael
14 Velez was telling the truth.

15 As Mr. Wirshba said, Ismael Velez, he will have his
16 day of reckoning, he will be sentenced for the crimes he has
17 admitted to but it doesn't change what Tony Issa did.

18 Mr. Brafman talked about how Ismael Velez was
19 extorting Tony Issa. He was forcing him to give him money in
20 exchange for work and as I have just said, Velez admitted to
21 you right here on the stand he sometimes asked Tony Issa for
22 more money because, guess what? They both knew what was going
23 on. I submit to you that that is proof that Tony Issa was
24 intending to get work when he bribed Ismael Velez. It was a
25 bribe. Tony Issa himself threatened to stop giving Velez money

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Summation - Ms. Hanft

1 if he didn't get more work. That's at the transcript page 456,
2 lines 11 to 13. Again, Tony Issa thought that Velez would shut
3 down his shop if he didn't give him money. That just goes to
4 show that Tony Issa knew giving Velez money was about getting
5 work. He was giving him money to get work.

6 And as you have heard so many times, you should listen
7 to Judge McMahon's instructions on the law but I expect you
8 won't hear that Ismael Velez' intent matters or Jim Nicholson's
9 intent matters or Jeff Blight's intent matters. That's because
10 it is Tony Issa's intent that matters. The question is whether
11 when Tony Issa was giving bribes to all of these people he was
12 doing it for work and the obvious answer is, the only answer
13 that makes any sense, is yes.

14 Is it good that Velez demanded more money? Is it good
15 that he may have admitted to other bribes? Of course not.
16 Just like it is not good that he committed a crime with Tony
17 Issa. We are not telling you Velez is someone you should like
18 or whose life choices you should approve of. Far from it.
19 But, we didn't choose Ismael Velez. Tony Issa chose Ismael
20 Velez and Tony Issa chose someone who tried to benefit right
21 back from Tony Issa's bribes. That's how a bribe works and
22 that doesn't make Tony Issa any less guilty.

23 Ladies and gentlemen, Mr. Brafman threw up all kinds
24 of things. He told you about throwing a piece of pizza against
25 the wall and seeing what sticks. Well, that's what he did in

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Summation - Ms. Hanft

1 his summation. Everyone else is to blame. Jeffrey Blight is
2 to blame, James Nicholson is to blame, Ismael Velez is to
3 blame. You know the old saying, fool me once, shame on you,
4 fool me twice, shame on me? What about fool me three times?
5 Because Tony Issa didn't just bribe one person, he didn't just
6 take one person out to fancy meals. He didn't just describe
7 how great Tootsie's was with one person or Brazilian
8 steakhouses or fishing trips to Florida. He didn't even give
9 cash to just one person. He pulled the same thing, he played
10 the same tricks, and he played the same game with three
11 different VMF managers.

12 Does Mr. Brafman want you to believe that this is all
13 one big coincidence after another? He keeps meeting the wrong
14 people. He keeps meeting people who play up his sympathy and
15 extort him. Poor Tony Issa keeps getting tricked into feeling
16 bad for people and giving them money; Tony Issa, who over and
17 over and over again talks on the tape about what a smart
18 businessman he is.

19 You know what is going on here. What is going on is
20 Tony Issa had an MO. He bribed and he bribed and he bribed and
21 you saw it play out on the tape and you heard it through the
22 testimony and you know it happened.

23 Now, ladies and gentlemen, Mr. Brafman spent some time
24 talking about the tax case but not too much time and that's
25 because you know that Tony Issa has no defense in that case.

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Summation - Ms. Hanft

1 Mr. Brafman tries to get you to blame the accountant, blame
2 Chris Tsamutalis, but it was Tony Issa who was feeding lies to
3 his accountant. What are the accountants supposed to do when
4 Tony Issa gives them false information?

5 And Agent Berzansky got up on the stand and he told
6 you, he told you on direct examination and he even told you on
7 cross-examination how he and his tax calculations gave Tony
8 Issa and his companies every benefit of the doubt. That cash
9 payroll thing that Mr. Brafman mentioned? Well, guess what.
10 Agent Berzansky considered that entire amount -- the entire
11 amount -- not deposited into the account the cash payroll he
12 gave Tony Issa the benefit of the doubt. You know it is not
13 cash payroll. You know, you saw the cash sheets. You saw
14 Tony, Tony friend, Tony family. You saw the e-mail from
15 Daniela Silva about all the personal money that Tony Issa had
16 taken out of his company but he did not even hold that against
17 Tony Issa.

18 Mr. Brafman spent some time talking about the contact
19 process and how the postal service is all a mess hearing the
20 term "postal crazy land." He mentioned that Mr. Issa built a
21 great facility and fulfilled a need. That does not mean that
22 Tony Issa didn't commit crimes. You can't just build a great
23 facility and take advantage of the postal service and say, oh,
24 they renewed my contract so, guess what? I get to keep
25 defrauding them, I get to keep bribing people. That's not how

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Summation - Ms. Hanft

1 this works.

2 The fact that Jim Nicholson didn't know about the
3 contract? Guess what, Waters water also testified and told you
4 those contracts, they're not entitlement to work, they just
5 mean that the vendor, the third-party contractor is approved
6 and you can use them. And guess what? Who helped Tony Issa
7 get some of those contracts? Ismael Velez who was getting
8 paid, who was getting bribes. You heard all about that.

9 Ladies and gentlemen, I just have a few more things to
10 tell you. I want to talk briefly about reasonable doubt
11 because the defense, they want you to believe that reasonable
12 doubt is some impossible standard. Judge McMahon will instruct
13 you about what reasonable doubt means. You should listen to
14 and follow her instructions. But keep in mind the standard
15 isn't beyond any doubt, it's beyond a reasonable doubt and
16 that's the same standard that is used in every courtroom in
17 every criminal case across the country. It's a high standard
18 and we embrace that standard but it's not insurmountable. If
19 it were, no one would ever be convicted of a crime?

20 MR. BRAFMAN: Objection.

21 MS. HANFT: And we have met --

22 THE COURT: The objection is overruled.

23 MS. HANFT: We have met that burden in this case. The
24 mountain of evidence against Tony Issa shows that he is guilty
25 beyond a reasonable doubt.

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Summation - Ms. Hanft

1 I am just going to ask if we can pull up Government
2 Exhibit 809. I referenced this earlier and I just want to make
3 sure we have all seen it.

4 Remember this? If we can go back to the first page?
5 Mr. Brafman talks about Chris Tsamutalis, the accountant.
6 Chris Tsamutalis, the accountant and how he compared to Agent
7 Richard Berzansky as Lebron, he didn't know what he was doing.
8 Well, guess what? Chris Tsamutalis, he told you I met with
9 Tony Issa, I talked to him about the subcontracting problem,
10 that if he gave all of this money and it went to subcontracting
11 we have to amend the return for Hybrid -- the company Hybrid
12 and do new tax returns for High Powered. He sent out a tax
13 return to them.

14 So, when you hear that Tony Issa didn't know what was
15 going on and Tony Issa didn't have an intent to evade taxes,
16 keep in mind Government Exhibit 809. It says, Dear Tony, and
17 told him to file as soon as possible. Look. Date due: As
18 soon as possible.

19 Hybrid's amended tax return. He never did that.

20 Let's briefly turn to Government Exhibit 725.
21 Remember this? *What is the use? Your stupid accountant to*
22 *make a loan and then have to pay hundreds of thousands in tax.*
23 *Tell him to call me ASAP.* Is this someone who didn't know what
24 was going on? Ladies and gentlemen, you have been very
25 attentive and we appreciate the time you have given to this

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1 case and the attention you have given to the evidence and to
2 the witnesses during this trial. I am going to sit down and I
3 ask that you listen to the Judge's instructions carefully on
4 the law and like we did at the beginning of the this trial, I
5 am going to ask you to use your common sense, decide this case
6 based on the evidence you have seen and heard. If you do, you
7 will see that this is not a close case.

8 The evidence of Tony Issa's guilt, his bribery, his
9 stealing the government's money and his tax evasion, it is
10 overwhelming. You have heard from multiple VMF managers, Tony
11 Issa's employees, accountants, and IRS revenue agent, you have
12 seen text messages, e-mails, photographs, bank receipts, bank
13 statements and you have heard recordings, recordings of the
14 defendant bribing VMF managers in return for work and telling
15 them to keep it all a secret. You have seen videos of cash
16 handoffs under a table. If you consider all of that evidence
17 and use your common sense, you will reach the only verdict
18 consistent with the evidence in this case -- that Tony Issa is
19 guilty as charged.

20 Thank you.

21 THE COURT: Okay. Thank you Ms. Hanft.

22 So, we have now heard the lawyers' argument about how
23 you should view the evidence. Obviously I gave them time
24 limits so they couldn't talk to you about absolutely everything
25 in the evidence, but I think you will agree it has been a most

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1 interesting and enlightening day and it is time for this day to
2 be over.

3 Tomorrow morning, when you arrive, there will once
4 again be an order form for your lunch on the table. Order your
5 lunch, Jim will make sure that you get it, and we will start
6 the day at about a quarter of 10:00 and I will deliver the
7 charge. We will take a break in the middle of the charge
8 because it is a lot to absorb. It's not nearly as engrossing
9 as what you heard today and it is kind of a longish charge,
10 probably longer than it should be, but that's partly because
11 there are a number of tax laws I have to advise you about. So,
12 we will do that and then you will retire to deliberate and
13 render your verdict.

14 So, the hardest work is yet to come so get a good
15 night's rest. Don't discuss the case tonight, keep an open
16 mind, and I will see you in the morning.

17 (Continued on next page)

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(Jury not present)

THE COURT: Okay. Wonderful, everyone. So, I will see you in the morning.

MR. SOLOWIEJCZYK: Your Honor, if we could briefly be heard about the charge your Honor circulated on the USPS rules? We have a very minor proposed tweak.

THE COURT: I don't have it.

MR. SOLOWIEJCZYK: We actually have --

THE COURT: You will have to wait until Jim gets back. Can you get me a copy of the charge?

THE DEPUTY CLERK: Let me get it from the printer.

THE COURT: They want to make a change.

MR. SOLOWIEJCZYK: Your Honor, we have a piece of paper with your charge and our proposed change.

THE COURT: Okay. Well, that's fine.

MR. SOLOWIEJCZYK: Your Honor, I will let you read it first.

THE COURT: You couldn't just mark mine up? It is so much easier.

MR. SOLOWIEJCZYK: I'm sorry. We had limited time this afternoon, as you might imagine, as you can tell from the spelling mistake.

MR. BRAFMAN: I can't find what you changed.

THE COURT: The bottom of the second paragraph. They made it longer, that's what the government does.

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1 MR. SOLOWIEJCZYK: Do you have an objection?

2 MR. BRAFMAN: No, no. I don't understand why you
3 would ask for the change.

4 MR. SOLOWIEJCZYK: The way the charge is currently
5 written it makes it seem as if there is no way any of this is
6 relevant and respectfully, yes, it is true that violating
7 postal rules alone is not a crime, everyone acknowledges that,
8 but that can be informative to them.

9 THE COURT: You are right. You are right about that.
10 So, just let me mess with this so that it doesn't take so many
11 words. Okay?

12 MR. SOLOWIEJCZYK: Thank you, your Honor.

13 MR. BRAFMAN: I would object to this.

14 THE COURT: That's okay.

15 MR. BRAFMAN: Your Honor, I would object to this, your
16 Honor. I think what they're saying -- you know what? I don't
17 object.

18 THE COURT: You don't. You don't.

19 MR. BRAFMAN: If that makes the difference then I will
20 accept it.

21 (Adjourned to Tuesday, December 18, 2018 at 9:45 a.m.)
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GOVERNMENT EXHIBITS

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DEFENDANT EXHIBITS

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